

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 320 (2012)¹ Local democracy in Germany

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.b of Statutory Resolution of the Committee of Ministers CM/Res(2011)2 relating to the Congress of Local and Regional Authorities of the Council of Europe, which provides that one of the aims of the Congress shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3 of the above-mentioned Statutory Resolution CM/Res(2011)2, stipulating that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. its Resolution 307 (2010) REV on the “Procedures for monitoring the obligations and commitments entered into by the Council of Europe member states in respect of their ratification of the European Charter of Local Self-Government (ETS No. 122)”;

d. its Resolution 299 (2010) on the follow-up by the Congress of the Council of Europe Conference of Ministers responsible for Local and Regional Government (Utrecht, Netherlands, 16-17 November 2009), which provides that the Congress will use the Council of Europe Reference Framework for Regional Democracy in its monitoring activities, as well as the reply given by the Committee of Ministers to Congress Recommendation 282 (2010) [CM/Cong(2011)Rec282final] encouraging the governments of member states to take account of the aforementioned Reference Framework in their policies and reforms;

e. the explanatory memorandum on local and regional democracy in Germany drawn up by the Rapporteurs, BrittMarie Lövgren and Ignacio Sanchez Amor², following the official visits to Germany in June and September 2011.

2. The Congress recalls that:

a. Germany signed the European Charter of Local Self-Government on 15 October 1985 and ratified it on 17 May 1988 with entry into force on 1 September 1988, declaring that the scope of Article 9, paragraph 3 did not apply to municipal associations (*Gemeindeverbände*) and counties (*Kreise*) in the *Land* of Rhineland-Palatinate, while in all other *Länder*, the same paragraph did not apply to the *Kreise*. None of these exceptions, made in 1988, have been removed since then;

b. Germany did not sign the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);

c. the Congress Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee) decided on 23 March 2011 to carry out the first general monitoring of the situation of local and regional self-government in Germany and its compliance with the European Charter of Local Self-Government. It instructed Ms Lövgren and Mr Sanchez Amor to prepare and submit to the Congress, as Rapporteurs, a report on local and regional democracy in Germany;

d. the Congress delegation carried out a monitoring visit to Germany from 27 to 29 June 2011 visiting Berlin, Potsdam and Frankfurt (Oder) and on 27 and 28 September 2011 visiting Düsseldorf, Langenfeld (North-Rhine Westphalia), Wiesbaden (Hesse), Stuttgart and Ludwigsburg (Baden-Württemberg).

3. The Congress wishes to thank the Permanent Representation of Germany to the Council of Europe and the German authorities at central, regional and local levels, the associations of local and regional local authorities, and experts as well as other interlocutors for their valuable cooperation at different stages of the monitoring procedure and the information conveyed to the delegation.

4. The Congress notes with satisfaction:

a. that Germany recognises, both in its federal and regional (*Länder*) constitutions, the right to self-government of municipalities, setting a high standard for the protection of local authorities;

b. that Germany has made considerable progress in accepting and complying with the recommendations adopted by the Congress after its monitoring of local government finances in 1999;

c. that the principle of concomitant financing has been inserted in all regional constitutions;

d. the efforts made by some *Länder* to establish special funds and to launch subject-specific programmes to help local authorities in need to tackle their liquidity problems and to prevent further indebtedness;

e. that the mode of consultation with local government associations is formally recognised in the procedural rules of the federal government.

5. The Congress expresses some concern that:

a. although the financial situation of local authorities, already evaluated as “critical” in 1999, has seen some improvement due to a positive tax yield at local level, the situation of local authorities remain pre-occupying due to the rise in social welfare spending, structural deficits of the financing of local authorities and an increasing imbalance between them;

b. in addition, the principle of concomitant financing must be observed more strictly. One of the main reasons for the

structural underfunding of local authorities lies in the fact that they do not receive sufficient funding from the central government in return for responsibilities assigned to them;

c. the participatory rights of associations of local authorities need strengthening since, although the mode of consultation with such associations is formally recognised in the procedural rules of the federal government, it is not covered in those of the *Bundesrat*, nor is it institutionally enshrined in the constitution. The right of associations of local authorities to be consulted at federal and *Land* level should therefore be set out in the Basic Law and in the constitutions of the *Länder*. The consultation rights in the rules of procedure of the federal government and the *Bundestag* must be strengthened in practice.

6. In the light of this, the Congress requests that the Committee of Ministers invite German authorities to:

a. fully respect the constitutional guarantees for local finances, ensuring that local authorities can be associated to the decision-making process regarding the structure and the yield of taxes at local level, in spite of the prevalent negative economic trends and that, given the high level of indebtedness of local and *Land* governments, local author-

ities be provided with adequate financial means that allow them discretion in how to use these resources;

b. establish standards and criteria for concomitant financing of local authorities providing transparency in the whole financial calculation and planning process thereby providing practical guarantees and reinforcing the framework of this principle with real planning mechanisms involving local government interests;

c. institutionalise the participatory rights of associations of local authorities by enshrining them in the rules of procedure of the *Bundesrat* and in the constitution and strengthen them at federal and *Land* level.

d. sign and ratify, in the near future, the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

1. Debated and adopted by the Congress on 21 March 2012, 2nd Sitting (see Document CG(22)7, explanatory memorandum), Rapporteur: B.-M. Lövgren, Sweden (L, ILDG).

2. Since December 2011, Mr. Ignacio Sanchez Amor is no longer Member of the Congress.