

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

Recommendation 97 (2001)¹ on local democracy in Ireland

The Congress, bearing in mind the proposal of the Chamber of Local Authorities,

1. Recalling:

a. its Resolution 31 (1996) on the guiding principles for the action of the Congress when preparing reports on local and regional democracy in member states and applicant states;

b. in particular, paragraph 11 of this resolution, in which the Congress requests that over a reasonable period of time all member states be the subject of a detailed report on local and regional democracy;

c. that, on the basis of the above-mentioned paragraph, it has already prepared several reports on local and regional democracy in various Council of Europe members states;²

d. that the new Statutory Resolution (2000) 1 on the Congress of Local and Regional Authorities of Europe, adopted by the Committee of Ministers on 15 March 2000 provides in its Article 2, paragraph 3 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;

2. Considering the willingness of the Irish Government and parliamentary authorities to pursue the political debate on local government in Ireland, with a view to improving the legislative basis and conditions for the exercise of local authority, and wishing to contribute to this debate in a constructive manner;

3. Having taken note of the report on local democracy in Ireland drawn up by Mr Louis Roppe (Belgium, L), rapporteur, Chairman of the Institutional Committee of the Chamber of Local Authorities, following two official visits by the rapporteur in January and March 2001, including visits to Dublin, Galway, Carlow and Maynooth;

4. Wishes to express its gratitude to all representatives of the Irish national (government and parliament) and local authorities, associations of local authorities, academics, journalists and representatives of non-governmental organisations who agreed to meet the rapporteur during the above visits for their interest in the Congress's activities and their valuable assistance in the preparation of the report;

5. Notes that the principal units of local government in Ireland today are the 29 counties and the 5 cities. In all,

there are 5 different legal classes of local authorities. Apart from the county councils and city councils there are also 5 borough corporations, 49 urban district councils and 26 town commissioners, which makes a total of 114 local authorities. The 3 latter classes are all town local authorities;

6. Notes that the reform process initiated at the beginning of the 1990s represented a break with the highly centralised tradition of the Irish State whose success depends to a considerable degree on the gradual implementation of a number of major fundamental principles of local democracy, particularly with regard to powers, finance, participation of public and state supervision as well as involvement of local councillors and their willingness to fully play political role at local level;

7. Notes in this context that the rigorous *ultra vires* (excessive power) doctrine applied in Ireland to local government until 1991 has been restricted and the state control over local government was reduced in 1994;

8. Welcomes the fact that the European Charter of Local Self-Government has influenced local government reform programme in the 1990s;

9. Notes that in 1996 the government decided that Ireland should sign and ratify the Charter as soon as the necessary formalities are completed;

10. Welcomes the fact that Ireland signed the European Charter of Local Self-Government in 1997;

11. Notes that the current Minister for the Environment and Local Government is committed to undertaking the necessary steps with a view of ratifying the Charter as soon as draft local government bill 2000 is adopted by the parliament. The Congress considers that this step would represent a clear expression of a commitment to the renewal of local government in Ireland;

12. Considers, however, that it is desirable that the Charter be ratified by Ireland as soon as possible;

13. Welcomes the amendments made to the Irish Constitution by national referendum in 1999 to include, for the first time ever, a provision on local government (Article 28A) which can be seen as a cornerstone of modernisation of Irish local government and constitutional recognition of a major political role of local government as a part of the democratic structure of the Irish state;

14. Welcomes the fact that Article 28A stipulates that there shall be directly elected local authorities and that local elections be held at least every five years;

15. Welcomes the recent introduction of the draft local government bill 2000 (hereafter draft bill 2000) by the Minister for the Environment and Local Government to the parliament which has marked the achievement of some years of debate over the future of local government in Ireland. The draft bill 2000 will undoubtedly, if adopted, be the cornerstone of the new Irish local government system;

16. Deems it necessary to submit certain observations and recommendations to the Irish Government and parliamentary authorities. In particular, the Congress:

a. with regard to functions of local authorities:

- i. notes that local government in Ireland is responsible for physical planning, housing and building, road transportation and safety, water supply and sewerage, development incentives and controls, recreational amenities and environmental protection, but in contrast to many other European countries, have only minor involvement in education, health and public transport and no statutory input to policing matters;
- ii. believes that limiting local authorities to matters which do not have wide implications for local community would risk relegating them to a marginal role in a long run (in this respect, that local government can better match local preferences which are economically more efficient than providing a standard, centralised level of services which takes no account of local variations in preferences);
- iii. understands that in a peculiar Irish context of economic and social changes the process of granting local authorities new wider functions should be seen as a realistic, gradual and a medium-term process;
- iv. notes at the same time that the current government is committed to transferring more functions to local government at a progressive pace in order to enhance local authorities' political role, but the success of granting local government gradually new powers will depend to a large extent on a simultaneous transfer of financial means being made available to these authorities;
- v. welcomes the fact that the draft bill 2000 allows a local authority to enter into agreement with another local authority, or other public body, to carry out functions on behalf of that body;
- vi. welcomes the fact that the draft bill 2000 provides powers for a local authority to take action to promote the interests of the local community in such manner as they consider appropriate;

b. with regard to local finance:

- i. observes that the transfer of the liability for domestic rates to the exchequer (public treasurer) in 1978, coupled with the capping of non-domestic rates in subsequent years, led to a highly centralised system of financing of local government – although since 1987 local government has been increasingly financed by local sources, the current system may be regarded as allowing limited discretion to local authorities to determine local service levels and related expenditure levels;
- ii. moreover, notes that funds available to local government through various programmes involved the creation, in the early 1990s, of an almost parallel system of local non-elected development bodies by-passing local democratically elected councils and dealing in particular with issues such as rural development and social matters which could also be performed by local authorities;

iii. observes that at the present local government is still to a large degree dependent on state financing – for the time being, the only discretionary local funding sources are rates on commercial premises and miscellaneous charges for services;

iv. invites the Irish authorities to further consider, in the framework of current reforms, granting local authorities with their own taxation revenue so that a substantial proportion of local resources can be derive from it;

c. with regard to local elected councils:

- i. notes that vacancies during the term of election are filled by the council itself by co-option, observes that in the draft bill 2000 there are provisions that the political party of the former councillor shall nominate the new one;
- ii. considers that it could be argued that co-option is not fully in line with Article 3, paragraph 2 of the Charter as it could be questioned whether co-option is a democratic way of filling vacancies in a elected body;
- iii. invites the Irish authorities to study whether in future a system of elected replacements could be introduced;

d. with regard to the *Cathaoirleach*'s (chairperson/mayor) role:

- i. notes that currently the *Cathaoirleach* of a local authority is elected on an annual basis by the members of the council and performs a representational role rather than an executive one like in many other European countries;
- ii. observes that in the draft bill 2000 it has been proposed that a county council and city council *Cathaoirleach* shall be elected by the electors through a direct election system as from 2004 – these measures seem principally to be intended as a means of increasing the interest of the general public in local government and as a counter balance to the manager;
- iii. considers that it makes little sense to directly elect a *Cathaoirleach* if he is not empowered to perform executive powers on behalf of a local authority and considers that if a stronger role of directly elected *Cathaoirleach* is not developed after a certain period, this could cause problems with regard to his relationship with the council and the manager;
- iv. invites the Irish authorities in the years to come, if this provision is adopted by the parliament, to consider giving the directly-elected *Cathaoirleach* executive powers in order to further strengthen the elected members' political and policy-making role as well as their involvement in local affairs;
- v. agrees that this gradual devolution of executive powers needs to be put on probation in the framework of a corporate policy group scheme and hopes that this process could be achieved soon;
- vi. considers, however, that in the meanwhile, should the *Cathaoirleach*'s executive powers not be specified soon, there could be problems in relation to the other council members if the *Cathaoirleach* does not have a majority in

the council as well as in relation to the manager who is currently in charge with the administration;

e. with regard to provisions on remuneration and leave of elected representatives:

i. notes that so far, with little exception, elected members of local government have had no satisfactory remuneration for their work for local authority and almost all are working on a part-time basis;

ii. therefore, considers that so far, elected members have not benefited from appropriate financial compensation for their work which is not in conformity with Article 7, paragraph 2, of the Charter;

iii. notes however, that these problems are addressed under a new local government bill;

iv. observes, at the same time, that members of the national parliament, holding simultaneous local and national offices (which is quite usual in Irish context) and having a salary and office resources with the parliament, can devote a significant part of their time to work on local issues. This situation is unfair to those local elected members who do not benefit from national parliament resources that would allow them to focus more on local issues;

v. notes that many local councillors spend an important part of their time on local authority business on top of their normal profession;

vi. moreover, notes that there are no rules on work leave for elected members especially for those working in the private sector with the exception of some provisions for councillors working in partly state-run companies or in the teaching profession. Consequently, it considers that, together with an unsatisfactory remuneration, the lack of rules on leave could lead to a shuffled membership in councils where the true balance between all genders of population is not reflected and categories such as youth, wage-earners and women are under represented;

vii. observes, at the same time, that there is a limited participation by women (16% of all elected members), young people and wage-earners in local government policy-making in Ireland today;

viii. therefore, invites the Irish authorities to further consider promoting participation of all ages, genders and social profiles of the Irish population in the local government;

f. with regard to dual mandate:

i. notes that in Ireland there is a strong tradition that many members of the national parliament also perform functions as elected members of local government and that today, 48% of the members of the Lower House and 63% of the senators are members of a local council;

ii. notes that the draft bill 2000 intends to eliminate the dual mandate entirely from the next local elections in 2004 and that the holding of simultaneous membership of town

and county local authorities, which is not infrequent, is not affected by the new bill;

iii. has been receptive to comments made by various interlocutors, who question the practice of simultaneous holding of office by national and local elected representatives;

iv. moreover, recalls that the Article 11 of the European Code of Conduct for the Political Integrity of Local and Regional Elected Representatives sets forth the applicable principles as regards restrictions on concurrently holding two or more mandates. Situations where a dual mandate affects the availability of elected representatives, leads to a conflict of interests and prevents them from performing their functions must be avoided;

v. is of the opinion, therefore, that it is appropriate to restrict the practice of simultaneous office-holding in order to valorise the role of local elected representatives who assume their political responsibility only at local level;

g. with regard to the relationship between local elected council and manager:

i. notes that in the Irish local government, the county/city manager plays an important role as head of administration and is generally entrusted with the executive functions of the county/city council. The manager's position is not an elected office and the council's influence on the appointment is limited;

ii. notes that so far, managers and local councils have been working in close co-operation and no case of a conflict between them has been recorded;

iii. notes that the elected council's functions are the so-called "reserved functions" which are specified in statute law. All other functions – "executive functions" – are performed by the manager. Important policy decisions are made by the elected council and the executive operates within these policy parameters and is subject to supervision and direction by the council. Reserved functions include the annual budget, the adoption of the land-use development plan and the borrowing of money as well as a number of other important decisions;

iv. notes, however, that under draft bill 2000, a manager cannot be removed without the sanction of the Minister for the Environment and Local Government;

v. notes that there is no executive committee of the council or the like provided for in Irish local government law, as operates in some countries and expects, in this respect, that newly established corporate policy groups (CPGs) will play this political role, thus giving gradually directly-elected mayors and chairs of the strategic policy committees (SPCs) more executive powers;

h. with regard to strategic policy committees and corporate policy groups:

i. welcomes the fact that the aim of SPCs is mainly to develop the neglected policy-making role of elected

members and to involve local sectoral and community representatives in local policy making;

ii. notes that they consist of elected members (two thirds) and sectoral representatives (one third);

iii. notes that in a new system of local government, SPC chairs (elected members) together with the council chairs, make up the corporate policy group which is designed to be a sort of cabinet of local authority in charge of dealing with finances and other cross-cutting issues;

iv. is of the opinion that the political executive body elected by the whole population might be more inclined to take hard political decisions, which is probably difficult to do in the present context;

v. understands that, at this stage, it is clear that SPCs will need time to develop their full potential, and welcomes the Irish authorities' willingness to gradually give CPGs a more executive role in managing local affairs. If this process is completed in the years to come, one will be able to speak about a radical change in local authority structures and in the central role of elected representatives with regard to local management;

vi. however, points out that without active participation of elected members there could be a risk that SPCs will in reality take over the decision-making from the council. This can lead to a situation where the democratically elected members of the council find that the real decisions are taken by the interest-groups;

vii. notes that for the time being, this seems not be the case – on the contrary, SPCs provide a platform where local initiatives can be discussed in an open way – and encourages the Irish authorities to continue this process;

i. with regard to the role of central government:

i. considers that the central government still plays an important role for local government and that the Minister for the Environment and Local Government has important regulatory powers, even in the new draft bill 2000;

ii. notes that the draft bill 2000 empowers the minister to regulate numerous matters such as gender balance in committees (sec. 44), strategic policy committees (sec. 48), corporate plan (sec. 133) and European Code of Conduct for the Political Integrity of Local and Regional Elected Representatives (Appendix to Recommendation 60 (1999), sec. 168);

iii. it is doubtful whether the prolific use of regulations is in harmony with the spirit of the Charter (Article 4, paragraph 2, and Article 8, paragraph 2) even though such regulations constitute secondary legislation, they must go before parliament and are subjected to review by the courts;

j. with regard to regional authorities:

i. welcomes the fact that in 1994, eight regional authorities were established with a specific mandate to promote co-ordination of public services at regional level, and to monitor and advise on the implementation of European Union funding in the regions;

ii. notes that in 1999, two new larger regional authorities, known as regional assemblies were established with an enhanced role as regards European Union programmes. They are the Border, Midland and Western Regional Assembly, and the Southern and Eastern Regional Assembly;

iii. notes that the regional authorities, to some extent, have surpassed the expectations, given their weak basis, and have had an impact at local level. They are involved in the decision-making process but perform basically advisory functions aimed at putting together regional development plans as a part of wider national plans;

iv. regrets however that the legislative foundations of the regional authorities remain rather weak as are the authorities' functions, compared with those of regions in other European countries with a strong regional tradition;

v. believes that regional authorities have a broad potential and are able to fulfil strategic, economic and sustainable development functions which are an essential part of subsidiarity;

vi. considers that although the regions do not seem to have any historical basis or public sentiment in the Irish context, their potential could be used in response to the need to find solutions to problems arising either at central or at local level (for instance in fields such as waste management, economic and social development plans, rural development, environment, etc.);

k. with regard to the European Charter of Local Self-Government (ETS No. 122):

i. notes that there is no obstacle to the ratification of the Charter;

ii. urges the Irish authorities to undertake as soon as possible all necessary steps with a view to ratifying the Charter;

l. with regard to other Council of Europe's conventions which have an impact on local government, urges the Irish authorities to sign and ratify:

i. the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159);

ii. the Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 169);

iii. the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144);

iv. the European Landscape Convention (ETS No. 176);

m. with regard to texts adopted by the CLRAE, urges the Irish authorities to consider the following when reforming local government:

i. the European Urban Charter;

ii. the European Code of Conduct for the Political Integrity of Local and Regional Elected Representatives (Appendix to Recommendation 60 (1999));

n. with regard to the principle of subsidiarity, calls upon the Irish Parliament to explicitly accept and recognise the principle of subsidiarity when discussing and adopting the draft bill 2000. This step would be a great opportunity for

Ireland to bring its legislation further into line with the European Charter of Local Self-Government.

1. Debated and approved by the Chamber of Local Authorities on 30 May 2001 and adopted by the Standing Committee of the Congress on 31 May 2001 (see Doc. CPL (8) 4, draft recommendation presented by Mr L. Roppe, rapporteur).

2. Romania (1995); Italy, Turkey, the Russian Federation (1997); Albania, Bulgaria, Latvia, Moldova, United Kingdom, Ukraine (1998); Germany, “the former Yugoslav Republic of Macedonia”, Finland, the Netherlands, San Marino (1999); Estonia, the Czech Republic, France (2000).