

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

Recommendation 63 (1999)¹ on local democracy in the Republic of San Marino

(Extract from the Official Gazette of the Council of Europe
– June 1999)

The Congress,

Bearing in mind the proposal of the Chamber of Local
Authorities;

1. Having noted the report prepared by Mr Manueco Alonso following his visit to San Marino on 25 and 26 February 1999 in the company of two consultants and a member of the Secretariat;
2. Thanks the authorities of San Marino at all levels for the welcome they gave to the rapporteur and the spirit of receptiveness, dialogue and co-operation with which they greeted him;
3. Pays tribute to this historic Republic and its citizens, who have been able to preserve their separate institutions and fundamental freedoms over time;
4. Recognises the specific characteristics of the Republic, which are linked to its history, the nature of its law, its small size and its low population;
5. Draws particular attention to the entitlement of citizens, acting individually or in a group, to petition the *Consiglio Grande e Generale* (the parliament) directly through the institution of the *Arengo*;
6. Points out that Law no. 22 of 24 February 1994 on the nine *Giunte di Castello* (local councils elected by the citizens and presided over by a *Capitano* – the person heading the winning electoral list), represents a vital stage in the institutional development of local democracy in San Marino;

Notes that:

1. In spite of recent reforms, the Republic of San Marino is still a highly centralised unitary State;
2. The *Giunte di Castello* chaired by the *Capitani* are bodies that enjoy limited local autonomy in the political sense of the term. In particular:
 - they have no legal personality entitling them to take authentic administrative decisions;

1. Debated and approved by the Chamber of Local Authorities on 15 June 1999 and adopted by the Standing Committee of the Congress on 17 June 1999 (see doc. CPL (6) 4 revised, draft Recommendation, presented by Mr Vallejo De Olejua on behalf of Mr Manueco Alonso, Rapporteur).

- they have no real decision-making powers or responsibilities in specific fields and have little scope for action in public affairs, being limited to an advisory role and the executive management of public services;
 - they have an advisory role in the administrative process, in that they draw up reports or opinions in a number of areas such as the opening of industrial plants, commercial premises and various amenities, and central government could take these opinions into account although it retains the decision-making powers;
 - their opinions must be sought in certain cases and are binding in others for which they have detailed responsibility;
 - they forward citizens' requests to the relevant central government body, have the right to initiate legislation and may propose that a referendum be held;
 - they have no property of their own and no independent taxation system but all the funds allocated to them are used at their own discretion and they guide the use of the larger sums of money that are channelled through state services;
 - they have no staff of their own and their members receive vouchers for attendance at meetings;
 - they have no legal means of appealing to an administrative or judicial authority against potentially harmful acts and decisions of the central institutions or decisions that take no account of their opinion;
3. In practice it is the central institutions, namely the *Consiglio Grande e Generale* (the Parliament) and the *Congresso di Stato* (the government), which organise and manage virtually all public affairs, taking decisions on community life (as witnessed for example by the centralised land use plan applied to the whole of San Marino);
 4. Foreigners who have had their main residence in San Marino for many years do not have the right to vote or stand in local elections;

Considers that:

1. The reforms introduced in 1994 by means of the Law on the *Giunte di Castello* are broadly positive but the system has shown its limits;
2. In particular, the present organisation of San Marino is far removed from local self-government as defined by the European Charter of Local Self-Government (ECLSG) or practised in other European countries;
3. The small size of the State of San Marino and the small number of residents do not constitute any obstacle to the implementation of the principle of local self-government, which requires that independent, democratic local bodies should exist regardless of the size or nature of states;
4. There seem to be no constitutional or political barriers to consolidating and elaborating on a local government system which is currently still in its infancy by extending the powers of the *Giunte di Castello* in areas that are important to the local communities;

Recommendation 63

5. It is desirable and possible to strike a balance between the Republic of San Marino's specific features and the need to bring the local government system into line with the principles that prevail in neighbouring countries and are set out in the ECLSG;

Takes note of:

1. The fact that the question of the future of San Marino's local authorities is being discussed in various circles in the country;

2. The fact that the *Capitani* of the *Giunte di Castello* hold a collective meeting with the Heads of State twice a year;

3. The fact that the *Capitani* wish to make selective but genuine improvements, such as making opinions binding, increasing local powers in areas such as traffic management, town planning, industrial plants and other premises, the environment, etc;

4. The conclusions of the Special Committee on Institutional Reforms set up by the *Consiglio Grande e Generale*, which considered, in its final report submitted on 19 January 1998, that the *Giunte di Castello* should be given more autonomy and greater powers in sectors decided on by the *Giunte* themselves and assigned a broader sphere of competence;

5. The fact that the government of San Marino recognises the drawbacks of the present situation and is planning a further reform of local self-government;

Recommends that the governmental and parliamentary authorities of San Marino:

1. Consider the signature and ratification of the European Charter of Local Self-Government (ECLSG) as an aim to be achieved as soon as possible;

2. Take up the principles contained in the ECLSG with a view to launching as soon as possible, in close consultation and with the help and collaboration of the *Giunte di Castello*, a reform process aimed at making local self-government in San Marino substantially more

compatible with the minimum standards required for its ratification;

3. Decide in particular what "substantial share of public affairs" (Article 3 of the ECLSG) the *Giunte di Castello* will be entitled to "regulate" and "manage", particularly in areas of relevance to local life;

4. Give these authorities the "ability" to do so (Article 3 of the ECLSG) in terms of legal and administrative powers, property and finances;

5. Establish precisely in which areas the *Giunte* will have full and exclusive powers (Article 4.4 of the ECLSG);

6. Apply the principle of shared powers or responsibilities in accordance with Article 4 of the charter, while clearly specifying the areas covered;

7. Provide the *Giunte di Castello* with the possibility of consulting citizens freely on any question relating to local life, organising local referendums and making use of any other form of direct democracy;

8. Give the *Giunte di Castello* a genuine right of recourse to a judicial remedy in exact accordance with Article 11 of the ECLSG;

9. Examine the possibility of allowing long-established foreign residents to take part in local elections by granting them the right to vote and stand;

10. Grant the *Giunte di Castello* the right of association inside and outside the Republic in accordance with Article 10 of the ECLSG;

11. Establish a clear timetable for the reform of local self-government in San Marino in consultation with the *Giunte di Castello* and send it to the Bureau of the CLRAE;

12. Keep in contact with the relevant CLRAE bodies throughout the reform process so that they may provide assistance or advice or take action if appropriate.