

STATUTORY FORUM

Monitoring of the European Charter of Local Self-Government in Austria

Recommendation 446 (2020)¹

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:
 - a. Article 2, paragraph 1.b, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, stipulating that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;
 - b. Article 1, paragraph 2, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, 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 the effective implementation of the principles of the European Charter of Local Self-Government”;
 - c. Chapter XVII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;
 - d. the Sustainable Development Goals (SDGs) of the United Nations 2030 Agenda for Sustainable Development, particularly Goal 11 for sustainable cities and communities and Goal 16 for peace, justice and strong institutions;
 - e. the Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;
 - f. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;
 - g. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities, adopted on 4 April 2019;
 - h. the previous Congress Recommendation 302 (2011) on local and regional democracy in Austria, adopted on 24 March 2011;
 - i. the appended explanatory memorandum on the monitoring of the European Charter of Local Self-Government in Austria.
2. The Congress points out that:
 - a. Austria signed the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”) on 15 October 1985 and ratified it on 23 September 1987, with entry into force on 1 September 1988; Austria is not bound by Article 4, paragraphs 2, 3 and 5, Article 7, paragraph 2, Article 8, paragraph 2 and Article 11 of the Charter;
 - b. Austria has not signed the Additional Protocol to the Charter on the right to participate in the affairs of a local authority;

¹ Debated and adopted by the Statutory Forum on 28 September 2020 (see document CG-FORUM(2020)01-03, explanatory memorandum), co-rapporteurs: Marc COOLS, Belgium (L, ILDG) and Andrew DISMORE, United Kingdom (R, SOC/G/PD).

c. the Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (hereinafter: the “Monitoring Committee”) decided to examine the situation of local and regional democracy in Austria in the light of the Charter. It instructed Marc COOLS, Rapporteur on local democracy (Chamber of Regions, ILDG) and Andrew DISMORE, Rapporteur on regional democracy (Chamber of Regional Authorities, SOC), with the task of preparing and submitting to the Congress a report on the monitoring of the European Charter of Local Self-Government in Austria. The delegation was assisted by Ms Diana-Camelia IANCU, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat;

d. the monitoring visit took place from 10 to 12 December 2019. During the visit, the Congress delegation met representatives of various institutions at all levels of government. The detailed visit programme is appended to the explanatory memorandum;

e. the co-rapporteurs wish to thank the Permanent Representation of Austria to the Council of Europe and all those whom they spoke to during the visit.

3. The Congress notes with satisfaction:

a. The constitutional and legal recognition and substantial implementation of the principle of local self-government in Austria at federal and *Länder* level;

b. the reforms carried out since 2011 in Austria with a view to clarifying the distribution of powers between the Federation, *Länder* and municipal authorities;

c. the introduction of the *Länder* Administrative Courts to strengthen Austrian federalism;

d. the constitutional extension of the powers of associations of local authorities to conclude, on the basis of Land legislation, agreements among themselves and jointly perform their functions, and to establish – with the consent of the *Länder* concerned – associations operating across Land borders;

e. the adoption of the New Government Plan with the objective, among other things, to tackle outstanding issues of the low level of fiscal autonomy of the *Länder* and municipalities, to adapt the criminal law to current challenges (in particular, section 153 of the Austrian Criminal Code) and to evaluate the powers of cities, municipalities and municipal associations to conclude agreements on the basis of Article 15a of the Federal Constitution.

4. The Congress expresses concern, however, over the following points:

a. the persistently low degree of fiscal autonomy of subnational authorities and their extensive reliance on intergovernmental transfers. This reduces financial sustainability of subnational governments and their ability to keep pace with the increasing costs of carrying out their tasks (9.1-9.4);

b. the criminal legislation regarding the mayors’ liability that places a disproportionate personal responsibility on local elected representatives and thus seems inconsistent with the principle of a free exercise of the local mandate (7.1). Coupled with inadequate social conditions, this leads to mayors’ vulnerability and prevents a broad range of potential candidates from standing for local election;

c. unbalanced distribution of exclusive regulatory powers to the benefit of federal and *Länder* authorities and a high degree of complexity in the allocation of powers which jeopardises the exercise of local self-government.

5. In light of the foregoing, the Congress requests that the Committee of Ministers invite the Austrian authorities to:

a. enlarge the *Länder*’s and municipalities’ tax-raising power, by providing them with greater freedom to set the rates and base of their own-source taxes. This will strengthen local fiscal autonomy and ensure the financial sustainability and long-term resilience of sub-national government;

- b.* modify the criminal legislation regarding the liability of mayors when they carry out their functions in such a way as to align it with the principle of free exercise of elected mandates, and improve social conditions under which elected functions are exercised;
 - c.* simplify and clarify the allocation of powers and when drawing up relevant legislation refrain from unnecessarily limiting local authorities' tasks and responsibilities with due regard for the principle of subsidiarity;
 - d.* refrain from over-regulation and make sure that the changes in legislative powers of the *Länder* leave enough margin for regional autonomy;
 - e.* modify the Federal Constitutional Law to allow the associations of local authorities to participate in agreements between the Federation and the *Länder* on all matters that concern them;
 - f.* enhance the support for training of local government staff, especially in small and medium-sized municipalities, to strengthen their capacity to deliver high-quality public services;
 - g.* ratify Articles 4.2, 4.3 and 11 of the Charter since they are applied in practice;
 - h.* 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 (CETS No. 207).
6. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation on the monitoring of the European Charter of Local Self-Government in Austria and the accompanying explanatory memorandum in their activities relating to this member State.