

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 445 (2020)¹ Monitoring of the European Charter of Local Self-Government in Portugal

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 relating to the Congress of Local and Regional Authorities of the Council of Europe, 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 “[t]he 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 [ETS No. 122]”;

c. Chapter XVIII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

d. the Sustainable Development Goals of the United Nations 2030 Agenda for Sustainable Development, particularly Goal 11 on sustainable cities and communities and Goal 16 on 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. Congress Recommendation 323 (2012) on local and regional democracy in Portugal, discussed and adopted on 22 March 2012;

i. the explanatory memorandum contained in document CG-FORUM(2020)01-02 on monitoring of the European Charter of Local Self-Government in Portugal.

2. The Congress points out that:

a. Portugal joined the Council of Europe on 22 September 1976. It signed the European Charter of Local Self-Government (hereinafter “the Charter”) on 15 October 1985 and ratified it on 18 December 1990 without reservation. The Charter entered into force for Portugal on 1 April 1991; Portugal signed 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) on 26 May 2015 but has not yet ratified it;

b. the Committee on the Honouring of Obligations and Commitments by signatory States of the European Charter of Local Self-Government decided to examine the situation of local and regional democracy in Portugal in the light of the Charter. It entrusted Mr Xavier CADORET and Mr David ERAY with the task of preparing and submitting to the Congress a report on the monitoring of the application of the European Charter of Local Self-Government in Portugal;

c. in the course of two visits, which took place on 17 and 18 June 2019 and 27 November 2019, the Congress delegation met representatives of various institutions at all levels of government. The programmes of the visits are appended to the explanatory memorandum in document [CG-FORUM\(2020\)01-02](#);

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

3. The Congress notes with satisfaction that in Portugal:

a. the Portuguese Constitution gives prominence to local and regional self-government, which is acknowledged by all the stakeholders, although improvements are still required in institutional interaction between these two levels and that of the State (Articles 2 and 3 of the Charter);

b. the reforms carried out since 2013 in Portugal in the economic, social, political and administrative spheres have had lasting effects on local authorities and their budget situation, resulting in, among other things, a reduction of the number of municipalities and parishes (Article 4 of the Charter);

c. the appeal mechanisms enabling constituents to challenge the acts of territorial authorities are operative and there are fairly effective parallel procedures for oversight by the State (Article 8 of the Charter);

d. the possibilities for local authorities to associate and to develop intermunicipal structures seem suited to the challenges of territorial development on the mainland (Article 10 of the Charter).

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

a. local authorities and their representative associations are not systematically consulted on the basis of a clear, generally binding and functioning procedure (Articles 4.6 and 9.6 of the Charter);

b. the associations representing local authority interests and the local authorities themselves do not have the right to

1. Debated and adopted by the Statutory Forum on 28 September 2020 (see Document [CG-FORUM\(2020\)01-02](#), explanatory memorandum), co-rapporteurs: Xavier CADORET, France (L, SOC/G/PD) and David ERAY, Switzerland (R, ILDG).

appeal directly to the Constitutional Court against a decision or a regulation which contradicts one of their rights, with the notable exception of the autonomous regions (Article 11 of the Charter);

c. Portuguese municipalities have been not been equally affected by the transfer of powers and do not all benefit from adequate funding support from the State to properly carry out their tasks (Article 9.2 of the Charter);

d. local and regional authorities lack sufficient autonomy with respect to local taxes including the local and regional tax collection system (Article 9.3 of the Charter);

e. the co-operation between the State administration at local and regional levels and local and regional self-governing entities lacks a clear and coherent basis (Article 4.6 of the Charter);

f. the legal situation of associations of local authorities within autonomous regions seems uncertain (Article 10 of the Charter);

g. Portugal has not ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, nor the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159) (signed by Portugal on 9 May 1997).

5. In the light of the above, the Congress recommends that the Committee of Ministers invite the Portuguese authorities to:

a. introduce a procedure for systematic consultation of local and regional authority associations prior to any decision, regulation or legislation, on any questions directly concerning them;

b. grant the associations representing local authority interests, and possibly local authorities themselves along the lines of the prerogative granted to the autonomous regions, the right to appeal directly to the Constitutional Court;

c. consider setting up, on a temporary and flexible basis, special aid programmes or procedures to enable municipalities in financial difficulties to rebalance their budgets on a lasting basis, under the supervision of the court of audit;

d. give local authorities more autonomy with respect to local taxes, including the local tax-collection system;

e. consider setting up a national stability board, including local and regional representatives, in order to streamline budgetary objectives and procedures and guarantee compliance with national, European and international commitments and more harmonious co-operation between the different tiers of government;

f. clarify the legal situation of associations of local authorities in the autonomous regions through the passing of a new law in order to stabilise their status and optimise their activities and their relations with the regional and State levels;

g. envisage ratifying, 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 and the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities.

6. The Congress asks the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of the present recommendation on monitoring of the European Charter of Local Self-Government in Portugal and its explanatory memorandum (document [CG-FORUM\(2020\)01-02](#)) in their activities relating to this member State.