

# CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

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## **Recommendation 131 (2003)<sup>1</sup> on local democracy in Belgium**

The Congress, acting upon a proposal from the Chamber of Local Authorities,

### 1. Recalling:

*a.* Article 2, paragraph 3, of the Committee of Ministers' Statutory Resolution (2000) 1 on the CLRAE, which entrusts it with the preparation of country-by-country reports on the situation of local and regional democracy in the member states and applicant countries;

*b.* its Resolutions 31 (1996), 58 (1997) and 106 (2000) establishing guiding principles for the preparation of the above-mentioned reports;

*c.* the fact that it has already drafted several reports on the situation of local and regional democracy in various Council of Europe member states;<sup>2</sup>

2. Takes note of the report on the situation of local democracy in Belgium drafted by Ms Halvarsson (Sweden, L), rapporteur, Vice-Chair of the Institutional Committee of the Chamber of Local Authorities, drawing on the work of Professor Schefold, Expert, Vice-Chair of the Group of Independent Experts on the European Charter of Local Self-Government, further to a preparatory visit in December 2002 and two official visits in January and February 2003;

3. Wishes to express its gratitude to all the representatives at federal, regional and community level, local councillors and representatives and their associations, and academics who agreed to meet the Congress delegation (rapporteur, expert, secretariat) during its visits, for the interest they showed in the activities of the Congress and for their kind and valuable assistance in the preparation of this report;

4. Wishes to make the following comments and recommendations for the attention of the Belgian federal, regional, community and local authorities:

5. With regard to the European Charter of Local Self-Government (hereafter: the Charter) the Congress:

*a.* points out that Belgium signed the European Charter of Local Self-Government on 15 October 1985, but observes with regret that to date the Charter has not been ratified, noting none the less that the ratification procedure is well advanced following the "consent" given by the Chamber of Representatives and the Senate, the French Community, the Walloon Parliament, the German-speaking Community, the Brussels-Capital Region and the French Community Commission (COCOF);

*b.* Recommends that:

*i.* the Flemish Parliament, which received the draft ratification from the Flemish Government in February 2003, give its agreement at the earliest opportunity;

*ii.* Belgium simplify its procedure for approving international treaties, particularly those concerning local authorities;

6. With regard to legislative aspects of local self-government and the reforms initiated, the Congress:

*a.* recalls:

*i.* the long tradition of local self-government dating back to the legislation of 1836;

*ii.* that Belgium became a federal state, regulated by the co-ordinated Constitution of 17 February 1994, and that powers were transferred in application of the Special Law of 8 August 1980, amended in particular by the Special Law of 13 July 2001. These laws transferred competence for local self-government from the federal government to the regions, while maintaining certain powers at federal level and assigning other powers to the three communities;

*iii.* Resolution 1301 (2002) adopted on 26 September 2002 by the Parliamentary Assembly (Doc. 9536) on protection of minorities in Belgium;

*b.* recommends that greater consideration be given to the complexity of the position of the local authorities vis-à-vis the federal state, the regions and the communities. Such a situation makes the task of the "burgomasters" (mayors) and provincial governors often difficult in view of the complex legislation in force and the fact that they are often required to implement concurrently legislation and decisions adopted at federal, regional, community and local level;

7. With regard to local finances, the Congress:

*a.* points out that:

*i.* regionalisation presupposes that the financial resources of local authorities derive primarily from the regions and communities (themselves financed by the federal state) and partly directly from the federal state;

*ii.* the "Municipalities Fund" and "Provinces Fund" (now administered by the regions) designed to finance the local authorities' general expenditure (on the basis of criteria which take account of the individual situation of local authorities) appear inadequate to provide them with own resources within the meaning of Article 9, paragraph 1 of the Charter. Furthermore, the method used to distribute the funds, deriving from "contracts" between the regions and local authorities, lessens the scope for those authorities to determine freely the use made of the said resources;

*iii.* the fiscal autonomy of the municipalities is secured by their being able to levy local taxes on income and property (in advance). However, the level of deductions varies from one region to another;

*b.* recommends providing greater protection and firmer guarantees for the financial autonomy of local authorities under the constitution and in line with Article 9 of the Charter, bearing in mind that this is broadly supported in the public and legal debate currently taking place in Belgium;

8. With regard to the administrative supervision of the municipalities and provinces exercised by the regions and communities, the Congress:

*a.* points out that:

i. the exercise of such supervision may pose problems for the local authorities insofar as the governments of regions and communities may have a direct interest in reviewing decisions concerning specific issues;

ii. the federalisation of Belgium raises the typical problem of competition between federalism and local self-government. A characteristic feature of the system is that for certain delicate issues, such as the language problem, the law provides that certain powers remain at federal level;

iii. these questions are significant as they could jeopardise local self-government;

iv. Article 8, paragraph 2 of the Charter provides that “administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles”, whereas Article 162 of the Belgian Constitution provides for supervision of the local authorities, not only in the event of violation of laws but also in the event of breaches of the “general interest”, breaches which, in the Walloon Region, for instance, now also extend to the “regional interest”;

v. the Belgian Constitution should – and, according to the views expressed by many in the Belgian political debate, could – be interpreted in line with the Charter, given that it has already been signed by Belgium;

*b.* recommends that there be a restrictive application of supervision regarding the “general interest” in implementing laws and in practice in view of the transfer of powers from the federal state to the regions;

9. With regard to the scope of local self-government, the Congress:

*a.* points out that:

i. the definition of the powers of Belgian municipalities and provinces (“everything that is of provincial and municipal interest”) differs from the definition given in the Charter, although the objectives are the same;

ii. in the competition between municipalities and provinces, certain recent texts (in particular the preliminary draft decree on the Walloon provinces) would appear to pursue the aim of excluding certain provincial powers, the beneficiary tends to be the region instead;

iii. local authorities should be able to have powers in fields not regulated by a law;

*b.* recommends, in view of the conflict of powers between municipal and provincial authorities that thought be given to clarifying the respective fields of competence of municipalities and provinces;

10. With regard to the responsibility and appointment of local executive organs, the Congress:

*a.* points out that:

i. its Recommendation 113 (2002), adopted on 6 June 2002 (report by Mr A. Knape (CPL (9) 2) on relations between the public, the local assembly and the executive in local democracy stresses that Article 3, paragraph 2 of the Charter provides that councils or assemblies “may possess executive organs responsible to them”. In this way, the Charter introduces a general mechanism pertaining to the responsibility of the executive to the representative organs, irrespective of how the executive is elected or appointed;

ii. the current system whereby the burgomaster is appointed by the executive (the King or, in practice, the Minister of the Interior, and since 1 January 2002 the regional government) is used in fewer and fewer European countries. But this system, like the system of election of the aldermen by the municipal council, for example, is compatible with the Charter insofar as practice has shown that the municipal council exerts considerable influence in their appointment and supervision process;

iii. direct election of the burgomasters, either by the municipal council or directly by the electorate, is a better solution and one opted for in many European countries. This is the system proposed in the draft decree for Flanders;

iv. the question of granting a municipal council the right to pass a vote of no-confidence in a burgomaster (directly elected by the citizens) raises a number of difficult problems, which could, however, be solved in line with the Charter;

*b.* Accordingly recommends that Belgium adopt a system providing for the election of burgomasters, either by the municipal council or directly by the electorate;

11. With regard to citizen participation:

*a.* points out that little use is made of referendums in the municipalities and provinces because of the difficult conditions applying to them;

*b.* accordingly, recommends less stringent rules for organising referendums at local and provincial level;

12. With regard to local and provincial authority boundaries, the Congress:

*a.* points out that boundaries may be modified by regional decree except in the case of certain municipalities (where linguistic problems are especially delicate) for which boundary changes can only be made by federal legislation, following consultation of the regional governments concerned;

*b.* recommends that this situation be clarified so as to provide in addition for consultation of the local authorities concerned, as required by Article 5 of the Charter;

13. With regard to the right to associate, the Congress:

*a.* points out that:

i. the municipalities and provinces of the various Belgian regions are represented by associations which are active and influential in the protection and promotion of their respective interests and which also represent them at international level. The willingness of, amongst others, the Union of Cities and Municipalities of Belgium to contribute to this report testifies to this;

ii. Belgium has a long tradition of co-operation between local authorities, particularly through inter-municipal associations. However, the transfer of administrative supervision to the regions raises a number of problems in this respect and would appear to be leading to a significant limitation of co-operation between Belgian municipalities belonging to different regions;

iii. the fact that Belgium has not ratified Protocol No. 1 to the Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities limits the scope for local authorities to co-operate with their counterparts in other countries;

*b.* recommends that:

i. the necessary measures be taken to facilitate co-operation between Belgian local authorities beyond regional borders;

ii. Belgium ratify at the earliest opportunity Protocols Nos. 1 and 2 to the Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities;

14. With regard to the provinces, the Congress:

*a.* points out that:

i. following regionalisation, the provinces continue to have a clear role to play in implementing laws and as acting as a common instrument of the federal state, region and community;

ii. revision of the constitution necessitates new legislative provisions, particularly with regard to provincial governors, whose appointment and dismissal now fall under the competence of the regions;

iii. several powers of the Walloon Region have been transferred to the German-speaking Community (located entirely in the Walloon Region) and further transfers of

powers are under discussion, including administrative supervision by the German-speaking Community of the German-speaking municipalities, which could bring the position of this community closer to that of a province;

*b.* recommends that in-depth discussions continue in order to clarify the powers and future role of the provinces;

15. With regard to the general development of local democracy in Belgium:

*a.* points out that:

i. federalism in Belgium, which confers a significant level of self-government to the regions (and communities) is part of a policy of devolution in conformity with the principles of the draft European Charter of Local Self-Government, and consequently the principle of subsidiarity;

ii. federalisation has helped create a framework for linguistic pluralism and provide citizens with guarantees for preserving their own way of life, by giving rise to legal solutions which are admittedly complex but which function without violence;

iii. the system of guarantees, though complex, makes for peaceful co-existence and provides for conflicts to be dealt with by specific bodies, in particular the Court of Arbitration;

*b.* Recommends in particular:

i. that in-depth discussion be pursued with a view to clarifying certain legal norms, particularly certain laws and decrees concerning free choice of language and protection of national minorities;

ii. developing the scope for transfrontier co-operation for local authorities not only across municipal and national boundaries but also across regional and linguistic borders.

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1. Debated and approved by the Chamber of Local Authorities on 20 May 2003 and adopted by the Standing Committee of the Congress on 22 May 2003 (see Document CPL (10) 2 revised, draft recommendation presented by Mrs B. Halvarsson, rapporteur).
2. Year of adoption of a recommendation/resolution on local and regional democracy: 1995 (Romania), 1997 (Albania, Italy, Turkey, Russian Federation), 1998 (Croatia, Bulgaria, Latvia, Moldova, United Kingdom, Ukraine), 1999 (Germany, Finland, Netherlands, San Marino), 2000 (Moldova, Estonia, "the former Yugoslav Republic of Macedonia", Czech Republic, France), 2001 (Lithuania, Slovakia, Slovenia, Cyprus, Ireland, Ukraine, Bosnia and Herzegovina, Federal Republic of Yugoslavia), 2002 (Greece, Moldova, Hungary, Poland, Spain, Malta), 2003 (in preparation: Azerbaijan, Portugal, Moldova, Georgia, Russian Federation)