

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

Recommendation 132 (2003)¹ on municipal property in the light of the principles of the European Charter of Local Self-Government

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

1. Having regard to:

a. Article 2, paragraph 1, sub-paragraph *b* of the Committee of Ministers' Statutory Resolution (2000) 1 on the CLRAE, which states that one of the aims of the CLRAE is to submit proposals to the Committee of Ministers in order to promote local democracy;

b. Article 2, paragraph 3 of the Committee of Ministers' Statutory Resolution (2000) 1 on the CLRAE, according to which the Congress shall ensure that the principles of the European Charter of Local Self-Government (hereafter referred to as "the Charter") are implemented;

c. the report on municipal property (CPL (10) 3 Part II);

2. Considering that:

a. "Municipal property in the light of the principles of the European Charter of Local Self-Government" is the first report in the category of political and cross-sectional reports specifically aimed at ensuring the application of the Charter in the member states of the Council of Europe;

b. the legal connection between municipal property and the Charter, and the ability to exercise the right to own municipal property, mainly derive from a reading and interpretation of Article 3 ("Concept of local self-government") paragraphs 1 and 2, interpreted in the light of the preamble, as well as Article 9 ("Financial resources of local authorities") paragraphs 1 and 3, Article 4 ("Scope of local self-government") paragraphs 2, 4 and 6, Article 8 ("Administrative supervision of local authorities' activities") paragraphs 2 and 3, Article 10 ("Local authorities' right to associate") paragraph 1 and Article 11 ("Legal protection of local self-government");

c. the Charter (in the same way as the European Convention on Human Rights) must be regarded, as advocated by the European Court of Human Rights, as a living instrument to be interpreted in the light of present-day conditions, something which has been duly done by the Congress;

d. a systematic interpretation of Articles 3 and 9 of the Charter, the preamble and the explanatory report leads to the conclusion that local self-government, in the sense intended by this international treaty, must entail the ability of local authorities to own not only financial but also material assets and that, consequently, municipal property is regarded as a substantive and intrinsic component of local self-government;

e. the constitutions of member states and/or national legislation must provide the local authorities with sufficient guarantees with respect to municipal property in the exercise of their functions;

3. Thanking the Group of Independent Experts on the Charter, attached to the Institutional Committee, for its valuable help in drawing up the report on municipal property;

4. Welcoming the fact that, with one exception, in all the (thirty-one) states for which legislation has been examined by the Congress² the local authorities seem to formally have the legal capacity to own municipal property;

5. Welcoming the existence of a general movement, with some exceptions, in the countries of central and eastern Europe after 1990 towards the establishment of municipal property and the granting of the right to local authorities to possess property;

6. Acknowledging that:

a. in general, there are two systems of municipal ownership: states that provide for only one form of municipal property and states in which municipal property falls into two categories: public ownership (public property) and private ownership (private property);

b. in general, the forms of municipal property are the same as those of state property, that is to say there is equality of legal treatment in this connection between the state and the local authorities;

c. the applicable law is, with one exception, the same for local authority property as for state property;

d. the procedures for the acquisition and use of municipal assets vary;

e. in general, local authorities can set up commercial companies and form associations with other local authorities or entities by transferring to these companies or entities the ownership or management of certain municipal assets;

f. in certain states, all or part of the municipal assets can provide tangible security or be seized and/or disposed of;

g. in general, the local authorities have the right to benefit from expropriation, requisition and/or a right of pre-emption in their favour for reasons of public interest, this right being either exercised by the local authority concerned (alone or in collaboration with another legal person) or by another legal entity;

h. in certain states, municipal property may be expropriated and/or requisitioned by the state in the public interest, usually against payment of compensation;

i. in general, the local authorities that own municipal property can fully exercise their ownership rights where these rights are provided for, subject to certain exceptions;

j. the local authority bodies that exercise rights as owners of municipal property are the elected representative body and/or the executive, the latter being responsible to the former;

k. checks on municipal property either take the form of the ordinary administrative scrutiny of the local authorities or, in certain cases, specific forms of supervision;

l. publicity in the matter of municipal property is governed by ordinary or specific rules relating to the local authorities' work;

m. in the majority of states, the courts having jurisdiction in matters of municipal ownership are the ordinary civil courts, although there are a certain number of states with two types of court: administrative and civil;

n. charges on municipal assets constitute local authority resources, whether fiscal or non-fiscal;

o. there are a variety of national methods of taxing municipal assets;

p. in certain states, the transfer of powers from central government to the local authorities is accompanied by a transfer of assets;

q. in the countries of central and eastern Europe, democratic change was generally accompanied by the introduction not only of local self-government but also municipal property, which in most cases subsequently underwent a privatisation process;

7. Recommends to all the member states of the Council of Europe, with a view to the effective implementation of the Charter in areas to do with municipal property that:

a. they grant:

i. in the constitution and/or national legislation, the local authorities the right – where this right has not yet been conferred – to own municipal property as a fundamental component of local self-government for the discharge of duties in the local public interest;

ii. in their national legislation, the local authorities the right – where this right has not yet been conferred – to associate in the exercise of their functions with other local authorities for the discharge of duties of common interest and to transfer to the entities thus constituted the ownership or the management of part of the municipal assets under democratic supervision;

iii. the local authorities the right, within the limits of the law, to purchase on a preferential basis or use the assets of third parties by taking coercive measures (expropriation, requisition, pre-emption, etc.) for the public benefit and in accordance with democratic principles and procedures such as allowing the possibility of challenging a decision before a competent court and paying just and fair compensation;

b. they confer municipal ownership rights, preferably, and without affecting the right to have recourse to forms of direct democracy, on the local authority's representative body and/or executive body, which must act under the authority of the local assembly;

c. they ensure that:

i. normally, the local authorities with the right to own municipal property can fully exercise this right, in accordance with the law, and that any exceptions are provided for by law, serve a legitimate purpose, are necessary and comply with the principle of local self-government;

ii. the nature and quantity of municipal assets allow the local authorities to fulfil their duties in the local public interest;

iii. the local authorities possess, within the limits of the law, the possibility of acquiring and using municipal assets;

iv. the possibility, where provided for by law, for municipal assets to be disposed of, constitute tangible security or be seized, must not have any detrimental effect on the general existence of municipal property and local self-government;

v. the expropriation of municipal assets, if permitted by law, must be carried out for the public benefit and with respect for democratic principles, for example in exchange for just and fair compensation;

vi. the administrative supervision of municipal property, exercised in accordance with the law, is in principle only carried out to check legality and, in exceptional cases, expediency, while respecting the criterion of proportionality;

vii. in keeping with the rules of democracy, and in accordance with the law, there is genuine management transparency and openness in municipal property matters;

viii. the local authorities have the right, in accordance with the law, of recourse to an accessible and useful judicial remedy before an independent and impartial tribunal established by law in order to secure the protection of municipal property;

ix. in principle, the local authorities are able to use all charges for the use of municipal assets as their own resources;

x. the taxation of municipal assets, where this exists, is not excessive and supports the actual existence of municipal property and local self-government;

xi. the transfer of new powers by the state to the local authorities is accompanied, as far as possible and in accordance with the law, by not only the transfer of financial resources but also the transfer of assets – at least the assets allocated to the public services transferred, that are necessary for the exercise of the new powers;

xii. the state does not transfer to the local authorities assets that constitute a burden, likely to put unnecessary strain on

their budgets rather than useful resources required by these authorities to perform their functions.

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) 3 draft recommendation presented by Mr T. Jirsa and Mr W. Van Herwijnen, rapporteurs).
2. Albania, Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, “the former Yugoslav Republic of Macedonia”, Norway, the Netherlands, Poland, Portugal, Romania, Russia, Slovenia, Spain, Sweden, Turkey, Ukraine, United Kingdom.