

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 442 (2019)¹ Local and regional democracy in Bosnia and Herzegovina

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.*b.*, of the Committee of Ministers' Statutory Resolution CM/Res(2015)9 relating to the Congress of Local and Regional Authorities of the Council of Europe and the revised Charter appended thereto, which stipulates 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 2, paragraph 3, of the aforementioned Statutory Resolution CM/Res(2015)9, which stipulates 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, in particular, that the principles of the European Charter of Local Self-Government are implemented";

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

d. the "Guidelines for civil participation in political decision making", adopted by the Committee of Ministers on 27 September 2017 (Document CM(2017)83);

e. 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;

f. Congress Recommendation 324 (2012) on local and regional democracy in Bosnia and Herzegovina, and Congress Recommendation 356 (2014) and Resolution 369 (2014) on post-monitoring of local and regional democracy in Bosnia and Herzegovina;

g. the explanatory memorandum on local and regional democracy in Bosnia and Herzegovina.

2. The Congress points out that:

a. Bosnia and Herzegovina joined the Council of Europe on 24 April 2002 and signed and ratified the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") in full on 12 July 2002. The Charter entered into force in respect of Bosnia and Herzegovina on 1 November 2002;

b. the Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (Monitoring Committee) decided

to examine the situation of local and regional democracy in Bosnia and Herzegovina. It instructed Lelia Hunziker and Carla Dejonghe, with the task of preparing and submitting to the Congress a report on local and regional democracy in Bosnia and Herzegovina. The delegation was assisted by Professor Jens Woelk, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress secretariat;

c. the monitoring visit took place in two parts, from 20 to 22 November 2018 and from 19 to 21 February 2019, respectively. During the visit, the Congress delegation met the representatives of various institutions at all levels of government in Bosnia and Herzegovina. The detailed programme of both parts of the visit is appended to the explanatory memorandum;

d. the rapporteurs, aware of the specificity of the constitutional structure of Bosnia and Herzegovina, underline that the commitments entered into under the Charter legally bind the State, but it is also and primarily the responsibility of the two entities (Federation of Bosnia and Herzegovina and Republika Srpska), and the cantons to ensure the Charter's implementation according to the distribution of competences regarding local government. The recommendations will therefore be addressed to Bosnia and Herzegovina as a member State of the Council of Europe, but the implementation thereof will also be a matter for the entities and cantons;

e. the rapporteurs wish to thank the Permanent Representation of Bosnia and Herzegovina to the Council of Europe and all those whom they met during the visit.

3. The Congress notes with satisfaction that in Bosnia and Herzegovina:

a. local authorities enjoy freedom of association to promote and defend their interests;

b. sub-state authorities actively engage in international cross-border co-operation.

4. The Congress regrets, however, the little progress made in implementing its aforementioned Recommendations 324 (2012) and 356 (2014). It expresses its particular concerns on the following issues:

a. the lack of progress in the implementation of the constitutional reforms at all levels of government, which would aim to improve the system of local self-government throughout the country, as a consequence of the continuous political deadlock and rigidity of a political system divided along ethnic lines;

b. the situation with local elections in Mostar, which remains an important unresolved issue, depriving city residents of the right to choose their representatives at the local level (Article 3.2 of the Charter);

c. the lack of clarity in the assignment of responsibilities among various levels of government, combined with the non-respect of the principle of subsidiarity, notably in the Federation of Bosnia and Herzegovina as regards cantons and municipalities (Articles 4.2-4.4), which leads to an

overlapping of competences and a lack of accountability for task performance;

d. the shortcomings in the practice of consultation with local authorities on all matters that concern them directly, including on financial issues and relevant reforms (Articles 4.6 and 9.6);

e. the capping of employment at local level in Republika Srpska, which limits local authorities' capacity to take into account local circumstances and administrative efficiency when organising own administrative structures and delivering services (Article 6.1);

f. the financial resources of local authorities appear inadequate, undiversified and not commensurate with their responsibilities, and the tasks are delegated without concomitant funding (Articles 9.1, 9.2 and 9.4);

g. the inefficiency of the equalisation systems, which fail to smooth out economic disparities between rural and urban areas (Article 9.5);

h. local authorities' powers with respect to local taxes, which would enable them to better balance and plan their budgets, are relatively weak (Article 9.3);

i. although the local authorities have the right of recourse to judicial remedy, the non-implementation of Constitutional Court judgments in Bosnia and Herzegovina, including on local issues, undermines the effective enjoyment of this right;

j. the legislation does not sufficiently take account of the very specific situation of the city of Sarajevo (being capital of the State, the Federation of Bosnia and Herzegovina and Sarajevo Canton) and of Banja Luka (*de facto* capital of Republika Srpska, but without special status), which curtails their authorities' capacity to fulfil the additional functions of capital cities legally and in practice;

k. the lack of inter-entity co-ordination and a relevant institutional framework, which is not conducive to strengthening co-operation between municipalities along the Inter-Entity Boundary Line;

l. local authorities in Bosnia and Herzegovina work in a permanent state of electoral campaign, with different kind of elections being held every two years, which reduces the efficiency of their actions due to a political system marked by ethnic divisions and inflammatory rhetoric, which detracts attention from concrete local government issues.

5. In light of the foregoing, the Congress reiterates most of its previous recommendations from 2012 and 2014 and recommends that the Committee of Ministers invite the authorities of Bosnia and Herzegovina to:

a. introduce into the Constitution of Bosnia and Herzegovina the principle of local self-government to ensure the uniform respect of at least a minimum standard of local self-government throughout the country;

b. enhance the political dialogue with relevant authorities of all levels of governance involved to find a workable solution

to resolve the electoral impasse in Mostar, so that the city residents can vote in the next local elections, scheduled for October 2020;

c. revise the legislation to avoid overlapping of competences and ensure that the subsidiarity principle is applied in practice and, specifically in the Federation of Bosnia and Herzegovina, align the cantonal legislation with the federal law on principles of local self-government;

d. ensure systematic consultation in practice on all matters that concern local authorities, notably financial resources and local self-government reforms, and consider the establishment, in the Federation of Bosnia and Herzegovina, of a ministry for local self-government as a federal institution and relevant interlocutor for all issues concerning local government;

e. revise, in consultation with the Association of Local Authorities of Republika Srpska, the legal provision capping municipal employment in Republika Srpska, so that local authorities have more discretion and flexibility to deal with overstaffing and to guarantee efficient municipal administration, without being limited in their organisational autonomy;

f. revise the legislation on local finances to ensure that local authorities dispose of adequate and commensurate financial resources, and ensure that the transfer of delegated competences to lower levels of government are accompanied by concomitant financial resources;

g. review the currently used formula and distribution criteria in the equalisation systems to adjust them to a rapidly changing context by taking into consideration current demographic trends;

h. increase the local authorities' powers to decide on local sources of revenue so as to diversify them and strengthen local fiscal autonomy, notably that of smaller municipalities;

i. introduce necessary constitutional and legislative changes so that the specific situation of Sarajevo and Banja Luka, in terms of their status and competences, is duly taken into account in legislation and ensured in practice, to facilitate fulfilling their additional functions as capitals;

j. guarantee the implementation of the Constitutional Courts' decisions in general and on local self-government in particular, notably in the Federation of Bosnia and Herzegovina, to ensure the effectiveness of legal protection of local autonomy;

k. support and promote intermunicipal co-operation and the joint delivery of public services, notably across the Inter-Entity Boundary Line, and ensure that this co-operation is based upon legal guarantees;

l. consider grouping together the elections of a local nature (local elections and elections to cantonal assemblies) in line with Congress Recommendation 432 (2019) on the elections of the Cantonal Assemblies in the Federation of Bosnia and Herzegovina (7 October 2018);

m. consider signing and ratifying 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 to take account of this recommendation on local and regional democracy in Bosnia and Herzegovina and its explanatory

memorandum (CG37(2019)18) in its activities relating to this member State.

1. Debated and adopted by the Congress on 31 October 2019, 1st sitting (see Document CG37(2019)18, explanatory memorandum), co-rapporteurs: Lelia HUNZIKER, Switzerland (L, SOC) and Carla DEJONGHE, Belgium (R, ILDG).