

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 465 (2021)¹ Monitoring of the application of the European Charter of Local Self-Government in Spain

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, 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 relating to the Congress, 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 XVIII of the Rules and Procedures of the Congress on the organisation of the monitoring procedures;

d. the 2021-2026 Priorities of the Congress, in particular priority 6.b that concerns the quality of representative democracy and citizen participation;

e. the Sustainable Development Goals (SDGs) of the United Nations 2030 Agenda for Sustainable Development, in particular goal number 11, “Sustainable cities and communities”, and goal number 16 “Peace, justice and strong institutions”;

f. the Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

g. 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;

h. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities’ activities, adopted on 4 April 2019;

i. the previous Congress recommendation on the monitoring of the European Charter of Local Self-Government in Spain (Recommendation 336 (2013));

j. the explanatory memorandum on the monitoring of the European Charter of Local Self-Government in Spain;

k. the contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government adopted by the Congress Statutory Forum on 7 December 2020.

2. The Congress recalls that:

a. Spain joined the Council of Europe on 24 November 1977, signed the European Charter of Local Self-Government (ETS No. 122, “the Charter”) on 15 October 1985 and ratified it on 20 January 1988, with entry into force on 1 March 1989. The instrument of ratification included a declaration, according to which “The Kingdom of Spain declares that the European Charter of Local Self-Government will be applied throughout the territory of the State in relation to the entities contemplated in the Spanish legislation of local government and provided for in articles 140 and 141 of the Constitution. However, the Kingdom of Spain does not consider itself bound by paragraph 2 of Article 3 of the Charter to the extent that the system of direct suffrage foreseen therein should be implemented in all local authorities falling within the scope of the Charter”;

b. the Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government decided to examine the situation of local and regional democracy in Spain in the light of the Charter. It instructed Ms Bryony Rudkin, United Kingdom (L, SOC/G/PD), and Mr David Eray, Switzerland (R, EPP/CCE), with the task of preparing and submitting to the Congress a report on the implementation of the Charter in Spain. The delegation was assisted by Ms Tania Groppi, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat;

c. monitoring meetings took place from 18 to 20 May 2021, remotely. The Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the remote monitoring is appended to the explanatory memorandum.

3. The co-rapporteurs wish to thank the Permanent Representation of Spain to the Council of Europe and all those with whom they spoke during the remote meetings for their assistance.

4. The Congress notes with satisfaction that:

a. Spain is generally fulfilling its obligations with regard to the Charter;

b. the Charter is incorporated into Spain’s national law, which enables legal interpretation by the domestic courts;

c. local authorities are able to directly challenge laws or regulations passed by State and Autonomous Communities which adversely affect the constitutionally guaranteed local autonomy;

1. Debated and adopted by the Congress on 26 October 2021, 1st sitting (see Document [CG\(2021\)41-07](#), explanatory memorandum), co-rapporteurs Bryony RUDKIN, United Kingdom (L,SOC/G/PD), and David ERAY, Switzerland (R, EPP/CCE).

d. a regular working relationship between the central government and the Spanish Federation of Municipalities and Provinces (FEMP- Federación española de municipios y provincias) is in place and a wide variety of instruments for co-operation between the regional governments and local authorities does exist;

e. legislation has been revised in order to fix a minimum and maximum threshold for remunerating local elected officials in accordance with Article 7.2 of the Charter;

f. the right of the citizens to participate in local affairs is fully guaranteed.

5. The Congress expresses its concerns over the following issues:

a. the division of responsibilities between levels of government has not been clarified;

b. the general competence clause of municipalities has been narrowed to limited matters and subjected to several conditions;

c. the participation of the FEMP in the Conference of Presidents of Autonomous Communities and in the Sectoral Conferences is not defined in law;

d. the transfer of powers to municipalities without adequate financial resources persists;

e. the difficulties of managing small municipalities and the insufficient financial equalisation procedures or equivalent measures to correct the effects of the unequal distribution of financial resources between smaller and larger municipalities have not been solved;

f. Spain has not 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).

6. In light of the foregoing, the Congress recommends that the Committee of Ministers invite the authorities in Spain to:

a. grant local authorities full discretion to exercise their initiative in any matter which is not excluded from their competence nor assigned to any other authority;

b. clarify the division of responsibilities among the levels of government;

c. provide an appropriate legal framework and institutional settings for consultation of local authorities;

d. ensure that, in accordance with legislation, each transfer of powers to local authorities comes with a guarantee of adequate financial resources;

e. ensure smaller municipalities greater administrative support and ensure a system of equalisation between municipalities, in order to transfer resources from richer to poorer authorities;

f. remove, with regard to municipalities, the limitation relating to Article 3.2 of the Charter in the declaration included in the instrument of ratification;

g. sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

7. 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 Spain and its explanatory memorandum in their activities relating to this member State.