

# THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

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## Recommendation 285 (2010)<sup>1</sup> Regional democracy in Switzerland

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

*a.* Article 2, paragraph 1.*b* of Committee of Ministers Statutory Resolution (2000) 1 relating to the Congress, which provides that one of the aims of the Congress shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

*b.* Article 2, paragraph 3 of this statutory resolution, which stipulates 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, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

*c.* the decision to draw up a monitoring report on regional democracy in Switzerland taken by the Bureau of the Congress at its meeting on 18 September 2008.

2. The Congress recalls that:

*a.* Switzerland signed the European Charter of Local Self-Government (ETS No. 122) on 21 January 2004 with reservations in respect of Article 4, paragraph 4, Article 6, paragraph 2, Article 7, paragraph 2, Article 8, paragraph 2 and Article 9, paragraph 5, and ratified it on 17 February 2005. In Switzerland the charter applies only to the “political communes” (the first tier of local government);

*b.* the state of local and/or regional democracy in Switzerland has not previously been the subject of a Congress report;

*c.* the Institutional Committee of the Chamber of Regions instructed Mr Jean-Claude Van Cauwenberghe (Belgium, R, SOC) to prepare and submit to the Congress, as rapporteur, the report on regional democracy in Switzerland. Due to the expiry of Mr Van Cauwenberghe’s mandate as a member of the Congress, the Institutional Committee, during its meeting of 15 February 2010 appointed Mrs Marjan Haak-Griffioen (Netherlands, R, EPP/CD) as a regional rapporteur for Switzerland.

3. The Congress bears in mind that:

*a.* the content of the report, in accordance with the terms of reference given to the rapporteur, refers principally to regional (cantonal) democracy in Switzerland, but also embodies references to the organisation of the municipalities and communes;

*b.* “regions” within the meaning of the Congress texts, are the cantons in Switzerland. Cantons, moreover, constitute

sovereign “states”, which formed the Swiss Confederation or joined it in the course of history. The “confederation” is the supra-cantonal superstructure of the federal state.

4. The Congress takes note of the explanatory memorandum on regional democracy in Switzerland drawn up by the rapporteur, Mr Jean-Claude Van Cauwenberghe, following an official visit to Switzerland from 25 to 27 May 2009. The rapporteur was assisted by Mr Jean-Mathias Goerens, Consultant (Luxembourg), member of the Group of Independent Experts on the European Charter of Local Self-Government, whom the Congress thanks for his valuable contribution.

5. It wishes to thank the Swiss authorities at the local, cantonal and central levels, the associations of local and regional (cantonal) authorities and the various experts for the information conveyed to the delegation.

6. It considers that it is expedient to describe regional democracy in Switzerland in the light of the Council of Europe norms and principles, in particular the Reference Framework for Regional Democracy, referred to by the European ministers responsible for local and regional government during the ministerial conference in Utrecht (2009).

7. The Congress notes with satisfaction that:

*a.* the fundamental principles of regional self-government – such as the powers and the undivided responsibilities of the cantons, the stipulated extent of their sovereignty, the national solidarity and solidarity among cantons, their participation in shaping federal policy, the existence of cantonal constitutions through their representation at federal level, the principle of cantonal self-government, the ability to conclude agreements between cantons or between canton(s) and the confederation – are affirmed by the Federal Constitution of the Swiss Confederation;

*b.* Switzerland over the last twenty years has been implementing the “Reform of financial equalisation and apportionment of functions between the confederation and the cantons” (the RPT), completed in 2008. This instrument is intended to govern political and financial relations between the confederation and the cantons on the one hand and between the different cantons on the other. It introduced a clearer apportionment of responsibilities between the confederation and cantons, and made the financial equalisation system more manageable and fairer;

*c.* the Swiss cantons enjoy broad fiscal autonomy as regards the level of contribution. Within the limits set by the Swiss Federal Constitution, cantons are free to make arrangements for tax collection and set tax rates;

*d.* Swiss cantons are entitled to be consulted on matters of concern to them where a political initiative has been taken at federal level. The Conference of Cantonal Governments, with the task of representing the cantons in dealings with the federal authorities and upholding their common positions under the consultation procedures prescribed by the constitution, plays a very special role on the Swiss political scene;

*e.* there are national and regional intercantonal conferences with similar aims. They all perform a specific role and afford

the cantons better common advocacy of their interests vis-à-vis the confederation;

*f.* the well-developed practice of direct democracy is an essential feature of the Swiss political system. Cantonal autonomy is exercised in this area too, since the cantons have the right to choose for themselves how the citizens may participate in political decisions;

*g.* Swiss institutions, on the federal as well as cantonal level, take into consideration the rights of minorities appropriately, in conformity with the norms and principles established by the Council of Europe in this respect.

8. The Congress draws attention to certain specific aspects of Swiss regional policy, in particular:

*a.* in terms of structures, there are plans, already partly implemented, to set up intercommunal institutions at an intermediate level between the canton and the communes, whose form will vary according to whether the area is predominantly rural or urban. The purpose of these institutions is to co-ordinate structural and management activities by means of legislation or agreements and to make up for the inadequacies and weaknesses of local entities, which are often too small to be managed efficiently or too large to be managed by the institutions of a single commune or even a single canton;

*b.* Switzerland has problems of intercantonal co-ordination, which they are striving to resolve, especially where an urban agglomeration is located on the territory of more than one canton. These are undergoing rapid development independently of existing institutional structures, outstripping the pace of adaptation of the political bodies responsible for managing economic and demographic development;

*c.* the policy on urban agglomerations is seen as a central concern, and the need for action is deemed significant at all levels (intercommunal, intercantonal and international). This is a particularly sensitive subject, for this awkward issue of communal restructuring is an area where identity-related emotions conflict with the rationality required for efficiency in public services.

9. The Congress expresses its deep concern about possible abuses of the application, without additional safeguards, of Article 139 of the Federal Constitution on popular initiatives, which may contravene the obligations derived from international law.

10. The Congress concludes that:

*a.* overall, regional democracy in Switzerland is very elaborate and highly developed. It is dynamic, lively and progressive, and is experienced directly by citizens. It operates in the context of a federation which arose from Switzerland's historical, geographical, religious and sociological development. It has all the features of an efficient, coherent system enabling the people of this country – a country with a highly complex territorial structure and communities of different languages, cultures and faiths – to live in harmony and relative consensus;

*b.* various constitutional reforms and the adoption of the RPT have made it possible to adjust the balance of the cantons' powers with the confederation. The RPT goes well beyond an overhaul of financial instruments deemed to be obsolete and brings Swiss federalism up to date;

*c.* regional democracy in Switzerland complies with the democratic principles and the organisational and operational concepts embodied in the Reference Framework for Regional Democracy;<sup>1</sup>

*d.* Switzerland's institutional and political organisation is perfectly consistent with the philosophy evolved by the Congress on regional democracy, subsidiarity, devolution and citizen-centred policy, not forgetting the country's distinctiveness in the field of direct and participatory democracy. Closer comparative analysis, principle by principle, makes the Swiss regional model's conformity to the requirements upheld by the Congress still more apparent:

i. Swiss cantonal self-government and its constitutional existence correspond to Article 1.a of the reference framework;

ii. the statement of the need to respect subsidiarity in the Swiss Constitution is true to the preamble of the reference framework;

iii. the cantons' wide-ranging competences, which start from the bottom up, cover a great many fields mentioned in Article 1.b of the reference framework;

iv. relations with other sub-national territorial authorities, such as cities and communes, seem to comply, in ways that differ from one canton to another, with the provisions of the reference framework concerning the respect of local autonomy;

v. involvement of the cantons in state decision making, not only affecting their own competences and essential interests, but also relating to general affairs of the confederation, as required by Article 1.d (first three paragraphs) of the reference framework, is based on numerous institutions and procedures in Switzerland;

vi. supervision of the regional authorities by the state authorities complies fully with the strict limits set by the Swiss Constitution, namely conformity of cantonal decisions with federal constitutional provisions under the aegis of the Federal Court;

vii. the protection of regional self-government provided for in Article 1.e (first three paragraphs) of the reference framework, is respected in Switzerland and guaranteed by the Swiss Constitution (Article 47) and by direct democracy mechanisms also enabling the population of the cantons to react in the event of an alleged violation;

viii. the right of association and external relations, to which regional authorities are entitled under Article 4 (first three paragraphs) of the reference framework, are applicable because the cantons participate in their own right in international and transfrontier bodies;

ix. self-organisation of regional authorities (Article 2, first paragraph, of the reference framework) is the general principle in Switzerland deriving from cantonal autonomy, under which the cantons are free to organise their functioning and administration within the limits of their competences;

x. regional bodies, which, according to Article 2 (second to fourth paragraphs) of the reference framework, must be democratically constituted, are fully in line with Swiss policy as embodied in both the Federal Constitution and the cantonal constitutions;

xi. the guarantee with regard to cantons' financial resources and all the rules specified in this connection in Article 3 (first four paragraphs) of the reference framework have been in compliance with the principles of real financial autonomy since the RPT;

xii. financial equalisation and transfers seem to have been suitably re-organised since the RPT reform, although discussion on the criteria continues and may result in future legislative changes after evaluation. The new Swiss system is in any case consistent in principle with Article 3 (fifth to seventh paragraphs) of the reference framework.

11. The Congress recommends that the Swiss authorities take account of the following suggestions with a view to future reforms:

*a.* consider a structural reform at municipal level and the establishment of a model for urban agglomeration structures. This third tier of government seems less fully developed than the others and a restructuring which lends it efficiency, democratic legitimacy and institutional and legal stability appears necessary;

*b.* guide the future reforms towards a “new regional policy” as understood in Swiss terminology, that is a territorial development strategy. This type of arrangement should permit real regional governance and better management of sustainable development from the standpoint of solidarity as well as environmental protection;

*c.* consider the possibility of making major reforms within communes of, for example, services, intercommunal affairs or revenue, alongside possible restructuring;

*d.* take steps to ensure that the RPT, due for updating between 2012 and 2015, can be stabilised, since any permanent instability, especially in the mechanisms for equalisation and funding, is liable to cause disruption of future cantonal management;

*e.* carry out a critical review of the proliferation of intercantonal agreements, such as those concluded between the confederation and the cantons. Analysis of these co-operation arrangements and of the sectors and subjects which they concern would be useful for their rationalisation in order to guard against a risk of fragmentation and unduly bureaucratic implementation;

*f.* consider the possibility of finding new institutional foundations for regulating intercantonal agreements and their application, so as to allow traditional direct democracy to operate and the elected representatives to exercise their full political responsibility in this respect;

*g.* participation of the cantons in decision making at the federal level could be still further enhanced and various policy avenues are available here;

*h.* if tax competition is not to be a permanent source of potential discord, there is a need for balanced regulation representing a halfway house between complete tax freedom and the straitjacket of uniformity. This change needs to be accompanied by greater harmonisation of taxes;

*i.* as concerns respect of the rights of minorities and the “Jura question”, constructive dialogue initiated by the Assembly of Jura should be continued in order to achieve a negotiated solution.

12. The Congress recommends that the Committee of Ministers transmit this recommendation and the explanatory memorandum thereto to the Swiss authorities.

13. It recommends that the Parliamentary Assembly take account of these observations and recommendations under its periodical reporting procedure.

14. The Congress recommends that the Swiss authorities responsible for local and regional self-government appoint a high-level government – and, if possible, federal and cantonal – representative to attend one of the Congress sessions and make a presentation on the progress of local and regional reforms in Switzerland.

1. Debated and approved by the Chamber of Regions on 18 March 2010 and adopted by the Congress on 19 March 2010, 3rd Sitting (see Document CPR(18)2, explanatory memorandum), rapporteur: M. Haak-Griffioen (Netherlands, R, EPP/CD).

2. The Reference Framework for Regional Democracy can be found in the appendices to the Utrecht Declaration adopted on 17 November 2009 by the Council of Europe Conference of Ministers responsible for Local and Regional Government.