

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

Recommendation 55 (1999)¹ on the situation of local and regional democracy in the Netherlands

*(Extract from the Official Gazette of the Council of Europe
– June 1999)*

1. Having regard to the decision taken by the Bureau of the Congress, meeting on 27 April 1998 in Geneva, to draw up a report on the situation regarding local and regional democracy in the Netherlands, and to the appointment of the rapporteurs (Mr Moreno Bucci, Italy and Mr Hans-Ulrich Stöckling, Switzerland) by the Bureau meeting on 29 September 1998 in Strasbourg;
2. Having regard to the proceedings in the joint meetings of the Working Groups on the Situation of Local Democracy in Member States and on Regionalisation and Democratic Stability in Europe;
3. Recalling its Resolution 31 (1996) and the guiding principles for the action of the Congress when preparing reports on local and regional democracy in member states and applicant states;
4. Recalling especially paragraph 11 of Resolution 31 (1996) in which the Congress asks that over a reasonable lapse of time all member states be the subject of a detailed report on local and regional democracy;
5. Recalling the decisions taken by the Ministers' Deputies on 24-25 November 1998 at their 650th meeting which "invited the CLRAE ... to continue its work on the preparation of country-by-country reports on the situation of local and regional democracy in all the member states";
6. Considering therefore that the present review of local and regional democracy in the Netherlands is part of the general undertaking of the Congress to examine the situation of local and regional democracy in member states and applicant states;
7. Aware that the Netherlands is among the founding members of the Council of Europe and has attained a high standard of democracy and local self-government, whose principles and operation may none the less differ in many respects from the legal situation and the practice in most other European countries; this is owing to a long tradition associated with the country's status as a constitutional monarchy which for a very long time has experienced no fundamental upheaval in the way it functions, and may occasionally give rise to very special situations whose full complexity is not readily grasped by an outside observer;

1. Debated by the Congress and adopted on 16 June 1999, 2nd sitting (see doc. CG (6) 4, draft Recommendation, presented by Mr M. Bucci and Mr H. U. Stöckling, Rapporteurs).

8. Noting that in general the people tend to be satisfied with the services delivered by the territorial authorities, even though it must be acknowledged that little public interest is taken in democratic affairs at municipal level and still less at provincial level;
9. Aware that Netherlands democracy often operates more by seeking compromise or consensus among the various religious, political and sociological communities that make up the nation than by an outright majority/minority process;
10. Convinced that this political culture of consensus-finding is also a mechanism of local and regional democracy, affording many advantages but sometimes complicating the decision-making process and on occasion impairing its transparency and thus its attractiveness to the citizens;
11. Noting with satisfaction the Netherlands' general close compliance with European recommendations and decisions, as exemplified by the introduction, following the "Benthem" application and the judgement of the European Court of Human Rights in the case, of a genuine administrative justice system which henceforth also benefits territorial authorities;
12. Further noting with great satisfaction that the Netherlands has been well ahead in realising the common principles of the European democracies; recalling that this particularly applies to the European Convention on the Participation of Foreigners in Public Life at Local Level [ETS No. 144], which the Netherlands was the first country to sign and ratify, and under which the right of foreigners to vote in local elections without distinction as to nationality has been secured since 1985;
13. Also welcoming the fact that the Netherlands was among the first countries to ratify the European Charter for Regional or Minority Languages [ETS 148], not only applying it to the Friesian language in Friesland province but also applying the principles of the charter to other languages including those of non-territorial minorities, such as Yiddish and Romany;
14. Noting in this context that the municipalities of Friesland enjoy very extensive linguistic rights as regards, for instance, the use of Friesian in council deliberations and also in the actual naming of local communities which is subject to their own decision;
15. Welcoming, moreover, the fact that the Netherlands is among the leaders in practising European transfrontier co-operation and implementing the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and the protocols thereto [ETS Nos. 106, 159, 169];
16. Noting with satisfaction the Netherlands' great openness with regard to transfrontier co-operation involving the local authorities at its borders, and also the considerable efforts made by these local authorities and their associations regarding co-operation with other countries, whether in central and eastern Europe or in the

third world, with the aim of fostering the development of local democracy ;

17. Also aware that the Netherlands, with an exceptionally high population density in European terms, pays very close attention to questions of planning, urban development, environment, sustainable development and enhancement of public transport and cycling paths ;

18. Welcoming the desire commonly encountered among numerous people consulted in the Netherlands to adapt the present system to certain changes in society, with the aim of making local and regional democracy more transparent ;

19. Realising, however, that the Netherlands is characterised by a spirit of consensus and attachment to procedures, and that the political climate is consequently more conducive to gradual development than to sudden, drastic changes to the political system, a fact borne out, for instance, by the plans to create “urban provinces” (*Stadsprovincies*), which did not come to fruition, and by the experimental project to transfer powers between the municipalities and the province in Friesland, which was eventually abandoned ;

20. Aware, however, that constitutional amendments are necessary and that the procedure for amending the Constitution requires the parliament to adopt reforms twice over in exactly the same way during two different parliamentary terms and noting that, in spite of this obstacle, nine amendments to the Constitution have been adopted during the past fifty years ;

21. Aware that this situation does not facilitate a reform of the procedure for appointing mayors, the essentials of which are contained in Article 131 of the Constitution of the Netherlands ;

22. Having heard the arguments of the representatives of the Netherlands with regard to mayors’ and queen’s commissioners, to the effect that their country has instituted a political function conducive to a spirit of consensus in that these officials, chosen according to political affiliation and merit, are, once appointed, considered neutral and above the political parties, and thus have a positive influence on the proper conduct of local government affairs and act as impartial negotiators with the citizens, as provided in article 170 of the Law on Municipalities and article 175 of the Law on Provinces ;

23. Noting however that, while local authorities often gain an appointee of excellent standing under this arrangement, it runs counter to the idea of local autonomy in that the candidates considered for appointment seldom come from the local community ;

24. Noting, on the other hand, that mayors and queen’s commissioners generally regard themselves as true representatives of the local communities to which they are appointed, and that the population and the aldermen also regard them as such, in conformity with article 171 of the Law on Municipalities and article 176 of the Law on Provinces ;

25. Emphasising that although mayors do not demonstrate party commitment in local affairs, they have the

opportunity to do so for the purposes of their career as mayors or previous or subsequent careers as elected representatives or possibly ministers ;

26. Stressing that in the Netherlands, mayors and queen’s commissioners (governors of provinces) are appointed by the Crown on the basis of a recommendation by the Ministry of the Interior or the government and after consultation of a municipal council committee meeting in secret and that they are politically and hierarchically independent ;

27. Also taking note of the opinion presented to the Standing Committee by Mr Engel on “the conformity with Article 2 of the CLRAE charter for central government to appoint civil servants as chairmen of a local or regional authority’s executive board” when it concerns the situation of mayors and queen’s commissioners relates to the procedures for appointing members of the Congress (document CPL/GT/CEAL (4) 38 rev.) ;

28. Noting also that “lobbyists” designated by the various parties represented in the national parliament approach the government regarding the choice of candidates ;

29. Expressing regret that under this procedure consideration is given, at least where major towns are concerned, to the distribution of the parties in the national parliament (Second Chamber), and not to the majorities at local level, which appears contrary to the very principle of local autonomy ;

30. Recalling in this context Resolution 60 (1998) of the Congress on the verification of procedures for appointing national and special guest delegations to the CLRAE and of members’ credentials, particularly paragraph 17 on the position of the Dutch mayors and provincial queen’s commissioners ;

31. Noting that municipalities and provinces in the Netherlands are governed by three organs which are formally separate : for municipalities, the municipal council, the municipal executive (“college van burgemeester en wethouders”, consisting of the mayor and aldermen) and the mayor, and for provinces, the provincial council, the provincial executive (“gedeputeerde staten”, including the queen’s commissioner) and the queen’s commissioner, and welcoming the fact that Article 125 of the Netherlands Constitution clearly designates the municipal and provincial councils as the supreme authority at the respective levels ;

32. Regretting, however, that the status and remuneration of aldermen do not correspond to their high degree of responsibility ;

33. Welcoming the tabling of a bill in the Second Chamber which would improve the situation regarding procedures for the appointment of mayors and queen’s commissioners, to the extent that the municipal council itself would need to give an opinion on the candidates, even if possibly biased by the fact that the council is required in all cases to put up at least two candidates under this procedure ;

34. Welcoming in addition the fact that the bill provides the possibility, in certain cases, of consulting the interested population by referendum on the two leading candidates ;
35. Welcoming, finally, the express provision made by the bill for a procedure which formalises the practice and growing demand of the last few years, enabling the municipal or provincial council to call for the resignation of the mayor or queen's commissioner ; this seems an essential democratic feature, especially in the absence of capacity to elect the mayor or commissioner or have them elected by the citizens ;
36. Also gratified by the fact that the Netherlands Government in October 1998 set up a Royal Commission (Commission on dual authority and local democracy) consisting of prominent persons mandated to study the modernisation of the structures of local and regional authorities, together with the alternatives of single and dual authority (the municipal council itself wielding the executive power, or else having oversight of a separate executive) ; hoping too that the current discussions may help the Commission put forward proposals by the end of this year in accordance with its mandate ;
37. Welcoming the fact that Dutch provinces have a constitutional role in that their councils elect the members of the First Chamber of parliament (which thus acts as a "senate"), although elections are conducted on the basis of national lists ;
38. Regretting that the provinces have comparatively few powers, making the provincial elections unattractive to the citizens ;
39. Noting furthermore that a problem regarding spatial organisation and levels of authority arises, especially for the areas surrounding major cities, in particular with regard to what has been called "Randstad Holland" ;
40. Recalling in this connection the application relying on the European Charter of Local Self-Government which was made by some local elected representatives when the creation of an urban province in Rotterdam was planned, the referendums held and the reply given at the time, and noting that the petition was to no avail as the plan had been dropped ;
41. Aware that the level at which a number of social problems arise, such as the allocation of sites for the construction of housing and businesses or for main roads, unemployment, adaptation of the education system to the labour market, insecurity, and the distribution of financial burdens between the central municipality and outlying municipalities, does not usually correspond to the level at which municipalities and provinces operate, and that new democratic structures therefore need to be created, or existing ones modified, in order to develop an appropriate decision-making process ;
42. Aware that the inter-municipal co-operation structures set up to fill this gap do not have councils elected by the population and that this is an obstacle to direct democratic supervision ;
43. Appreciating the efforts made to revitalise and strengthen the provincial tier, particularly after the unsuccessful outcome of projected reforms which might have allowed an intermediate level to be created ;
44. Also gratified that the Netherlands was among the first countries to ratify the European Charter of Local Self-Government (ETS No. 122) ;
45. Regretting, however, that on ratification the Netherlands entered reservations in respect of Article 7, paragraph 2, Article 8, paragraph 2, Article 9, paragraph 5, and Article 11 of the charter, and that the government is not prepared to lift these reservations except possibly in respect of Article 7, paragraph 2 on appropriate financial compensation for local elected representatives, under certain circumstances ;
46. Taking note of the fact that the charter applies both to the local authorities and to the provinces of the Netherlands and that, conversely, the overseas possessions do not come within the scope of the charter as they are not part of the Dutch state as such ;
47. Regretting that the municipalities' own resources amount to barely 15% of receipts, and that the figure seems lower still for the provinces, the remainder of resources being apportioned by the Municipalities Fund and the Provinces Fund which is not in conformity with the principles of Article 9 of the charter ;
48. Thanking all contacts in the Netherlands who enabled the rapporteurs to study the current system of local and regional democracy and the planned reforms, above all the Association of Netherlands Municipalities ("Vereniging van Nederlandse Gemeenten"), the Association of Netherlands Provinces ("Interprovinciaal Overleg"), the Netherlands delegation and its Chairman, Alexander Tchernoff, Mr Peper, Minister of the Interior and his assistants, the numerous local and regional elected representatives and mayors and queen's commissioners who were willing to meet the rapporteurs, especially the representatives of the province of Friesland and the town of Leeuwarden, with their linguistic and cultural distinctiveness, the members of the Royal Commission, and the many academics and researchers who amplified the rapporteurs' information as a voluntary service ;
49. Taking note furthermore of the report "Structure and operation of local and regional democracy in the Netherlands" (1997 situation) as published by the Secretariat of the CDLR on the basis of information supplied by the Netherlands authorities,
50. In the light of the foregoing, and of the report submitted by Moreno Bucci and Hans-Ulrich Stöckling at the 6th Plenary Session, the Congress recommends that the Government of the Netherlands, and the other competent national bodies :
- a.* actively pursue reforms leading to election of mayors and queen's commissioners by the respective councils or directly by the constituents of the authorities concerned, perhaps with intermediate stages enabling the municipal and provincial councils to express a genuine choice and to hold a referendum to consult the population if appropriate,

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and enabling the councils concerned to demand the resignation of the mayor or the queen's commissioner;

b. pending reforms leading to genuine elections, to encourage the swift adoption of Bill 25444, which is currently being debated by parliament, or any other legislative proposals along those lines. This would enable mayors and queen's commissioners to sit as members of the Congress, in keeping with the spirit of its existing charter and Rules of Procedure, bearing in mind that if this were not the case, the situation of any such members of the Dutch delegation would have to be re-examined at the 7th Session (2000), if appropriate, in the light of the amended Congress charter;

c. to inform the Congress, as soon as possible, in conformity with article 14 of the European Charter of Local Self-Government, of the report and recommendations of the Royal Commission mentioned in paragraph 36;

d. to inform the Congress, as soon as possible, in conformity with the same Article of the Charter, of the steps taken by the Government based on the recommendations of aforesaid Commission;

e. in the spirit of Article 5 of the European Charter of Local Self-Government, to make consultation of the citizens of communities a universal practice when changes to their boundaries are contemplated;

f. to reconsider the expediency of the reservation entered in respect of Article 7, paragraph 2 of the European Charter of Local Self-Government, in so far as the Netherlands authorities themselves have indicated that outline legislation might be introduced to ensure that aldermen would receive adequate remuneration for the work performed, often full-time, even if such remuneration is settled in practice by the territorial authorities themselves;

g. to reconsider the expediency of the reservation entered in respect of Article 8, paragraph 2 on administrative supervision, in so far as the Netherlands authorities

themselves have indicated that this supervision, even if it remains constitutionally possible in principle, is not applied in practice so that in actual fact there is no control beforehand or indeed any review afterwards of the expediency of acts of territorial authorities;

h. to reconsider the expediency of the reservation entered in respect of Article 9, paragraph 5 of the European Charter of Local Self-Government concerning financial equalisation, the arrangements for which should not diminish the discretion local authorities may exercise, since in practice no such diminution occurs in the Netherlands even though it remains theoretically possible. It should therefore be conceivable to adapt the legislative position to the policy applied in reality;

i. to consider, in the spirit of Article 9 of the European Charter of Local Self-Government, the possibility of permanently and lastingly allocating a fixed percentage of public revenue to territorial authorities and furthermore to permit their increasing their own resources significantly through additional taxes or other measures;

j. to reconsider the expediency of the reservation entered in respect of Article 11 of the European Charter of Local Self-Government concerning recourse to justice, considering that since the charter was adopted the Netherlands has introduced a genuine administrative court system which is also available to territorial authorities. Should uncertainties persist in this regard, it ought to be easy to pass legislation which would remove doubt and ensure the system's compatibility with Article 11 of the European Charter of Local Self-Government;

k. to consider the possibilities for giving the provinces more institutional weight, in so far as this tier of democratic authority is necessary for proper and decentralised conduct of public affairs, and accordingly to consider increasing the powers of the provinces as well as their ability to act by devolving state powers to them, particularly in respect of spatial planning and environment.