

Recommendation 140 (2003)¹ on local democracy in Armenia

The Congress,

1. Recalling:

- a. Article 2(1) b of the Statutory Resolution of the Congress (2000) 1, which states that "the CLRAE shall submit proposals to the Committee of Ministers in order to promote local and regional democracy";
- b. Article 2(3) of the Statutory Resolution of the Congress (2000) 1, which states 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 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"; and
- c. Resolutions 31 (1996), 58 (1997) and 106 (2000) of the Congress, setting out guiding principles for drawing up such reports;

2. Bearing in mind:

- a. Armenia's commitments when joining the Council of Europe with regard to the development of local democracy;
- b. the Explanatory Memorandum CPL (10) 8 Part II on local democracy in Armenia prepared by Mr Christopher Newbury (United Kingdom, Chamber of Local Authorities) with the assistance of Professor Chris Himsworth, member of the Group of Independent Experts on the European Charter of Local Self-Government, for which he should be thanked, following two official visits to Armenia (19-22 June 2003 and on 2-5 October 2003);
- c. the Report on local democracy in Armenia adopted on 29 February 2000 by the Bureau of the Congress (rapporteurs: Mr Claude Casagrande, France, and Mr Gabor Kolumban, Romania) and the Report on local elections in Armenia adopted by the Bureau of the Congress on 13 November 2002 (rapporteur : Mr Christopher Newbury, UK);

3. Thanking:

- a. Mrs Natalia Vutova, Special Representative of the Secretary General in Armenia, the Information Office of the Council of Europe in Yerevan and the Association of Local Communities of Armenia for their valuable assistance in the preparation of the 2003 Report;
- b. the Office of the President of the Republic of Armenia, the Ministry for Territorial Administration, the National Assembly, the provincial governments of Tavush and Lori, the Associations of local self-government, the international organisations represented in Armenia, and the members of the Armenian delegation to the CLRAE for their help in preparing the Report and for their valuable comments during the CLRAE visits;

4. Wishes to make the following comments and recommendations for the attention of the Armenian authorities, the Committee of Ministers and the Parliamentary Assembly of the Council of Europe:

5. As regards the implementation of the European Charter of Local Self-government (hereafter referred to as 'the Charter') and the overall development of local democracy in Armenia since 2000:

- a. welcomes Armenia's ratification of the Charter on 25 January 2002, entering into force on 1 May 2002, which demonstrated a commitment to further reforms in the sphere of local government;
- b. recognises that in 2000 the Armenian legislature and Government made some progress, especially on the legal front, in reforming the system of devolved local government;
- c. acknowledges the positive role played by the Association of Local Communities of Armenia in that process;
- d. believes that following this progress, actual practice in local self-government needs to come into line with the provisions and spirit of the Charter, and existing legislation needs to be fully implemented;
- e. notes that although some changes have been introduced into domestic legislation since February 2000, including the enactment in May 2002 of a new Law on Local Self-Government (as amended in December 2002), the process of developing strong local communities has recently slowed, and considers that many of the conclusions reached by the CLRAE in 2000 have a continuing resonance and validity;

¹ Debated and approved by the Chamber of Local Authorities on 25 November 2003 and adopted by the Standing Committee of the Congress on 26 November 2003 (see doc. CPL (10) 8, draft Recommendation, presented by Mr C. Newbury, rapporteur).

f. recalls in this respect that in 2000 the CLRAE, while recognising the new character of local public institutions in Armenia, concluded that the functioning of local government was not without 'defects and shortcomings' which were expected to be rectified (in particular, in such fields as the financial and human resources of local authorities, the supervision of communities by central government and the status of Yerevan);

g. welcomes, in this context, the results of the Round Table on the elaboration of amendments to the law of the Republic of Armenia on local self-government, organised by the Council of Europe at Yerevan on 14-15 October during which a plan of action on reforms to be implemented in the field of local democracy was adopted;

h. finds in general that local self-government in Armenia remains weak and that large elements of the Charter have yet to be implemented;

i. notes that across Armenia as a whole, and especially in the rural communities, local government bodies have few substantial powers and that their autonomy is compromised by an unsatisfactory financial regime and by a lack of other resources, such as the absence of a strong local civil service;

j. recommends that:

i. the Armenian Parliament and Government continue their legislative work (on the municipal civil service, municipal property, the status of Yerevan and amendments to the current law on Local Self-government) with the assistance of the Council of Europe and in line with the following recommendations;

ii. the Armenian authorities consider a declaration that the following Articles of the Charter will bind the country: Article 5, Article 6, Article 7 (2) and Article 10 (3);

6. As regards the constitutional and legal foundation of local self-government:

a. acknowledges that the recognition of the general principle of local self-government is clear, both in the Armenian Constitution and in legislation;

b. recalls that:

i. in 2000 the Congress, commenting on the Law on Local Self-Government of 1996, observed that, although the provisions contained "an impressive series of principles", some of these could with advantage be embodied instead in the Constitution itself, affording them an additional safeguard; and believes that this recommendation remains relevant with regard to the current Law on Local Self-Government of 2002;

ii. there has, on the other hand, been criticism that the Constitution creates inflexibility and prevents desirable reform in a number of areas, notably the three-year periods of elective office, the status of Yerevan and the Government's power to remove chiefs of local communities;

c. considers that such specific aspects of local self-government should preferably be set out in the law;

d. recalls that in 2000 the Armenian authorities expressed a willingness to consider the above recommendations;

e. notes the failure of the Referendum on constitutional amendments held in May 2003 and the willingness of the newly-elected Parliament to initiate a new dialogue on constitutional amendments;

f. recommends that while preparing new constitutional amendments the Armenian authorities consider the recommendations contained in the CLRAE report of 2000 and in the present Recommendation, in particular with regard to the three-year periods of elective office, the status of Yerevan and the Government's power to remove chiefs of local communities, with a view to removing unnecessary inflexibility in these areas needing reform;

7. As regards the scope of local self-government:

a. takes note that the new Law of 2002 allocates an impressive set of own and delegated powers to local authorities;

b. notes, however, that in reality very few functions have so far actually been discharged by local communities, especially in the rural areas, because of a substantial lack of capacity and resources, and regrets that this is so;

c. considers, in that respect, that Article 4 of the Charter is not, in practice, being fully honoured;

d. notes that in Yerevan the powers of the districts are fewer than elsewhere in the country;

e. regrets that there is no clear mechanism for delegating the powers to be discharged by the communities and that the difference between a mandatory own power and a power delegated to the communities by primary legislation is not entirely clear;

f. recommends that:

i. the Armenian authorities consider, in consultation with representatives of local communities, how the own functions of the communities can most effectively be performed, especially in rural areas and in the districts of Yerevan;

ii. a mechanism for the delegation of powers be introduced;

8. As regards administrative structures and resources:

a. notes that there are still many obstacles to the attainment of a high-quality municipal service in Armenia, that the recruitment, evaluation and training of local government staff are not regulated by law, and that there is no national policy to address these issues;

b. considers that this is a particularly pressing concern in a large number of small communities;

c. takes note that a draft law on the municipal civil service is under preparation in Armenia;

d. encourages public discussion on this draft, and especially the participation of representatives of local authorities;

e. hopes that a new law on the municipal civil service will remedy the main outstanding problems;

f. questions the position of the deputy chief of the community, who retains broad powers but is a non-elected official;

g. recommends the Armenian authorities work with the Council of Europe on the preparation of a draft law on the municipal service and of a national training strategy;

h. suggests that the deputy chief of a community, who retains broad powers in the absence of the chief and is a non-elected official, should instead be elected, either directly at the same time as the chief or from among the local councillors;

9. As regards administrative supervision over local authorities (and in particular, application of Article 72 of the Armenian Constitution):

a. notes the existence of a wide range of national and State bodies entitled to supervise local authorities;

b. considers that the power in Article 72 of the Constitution to dismiss a chief "if the mandatory powers of the Chief of Community are not performed within actual revenues of the community budget or if powers delegated by the State are not sufficiently performed, as well as if a number of decisions made by the chief of community contradicting the Law and other legal acts are considered null and void by the decision of the court or the court recognised the fact of periodic breach of decisions of the Council by the Chief of Community" is too vaguely drawn;

c. finds that the very existence of a constitutional provision for such dismissals, especially one stated to be available simply "in cases prescribed by law", is difficult to justify in terms of the Charter;

d. notes that there is widespread agreement that reform of the constitutional and legislative provisions in this respect are required;

e. recommends:

i. that either the power to dismiss chiefs should be removed altogether, or else this power should be transferred to the courts;

ii. in particular that only the courts should have the power to ascertain serious and continual violations of the Constitution and the law;

f. suggests that provisions on the dismissal or suspension of local elected officials should be set out in legislation, and not in the Constitution;

g. recommends that:

i. a specific law on administrative supervision (which must be carried out a posteriori and only aim at ensuring compliance with the law and constitutional principles) be drawn up with the assistance of the Council of Europe;

ii. in the mean time the current law be made more specific with regard to supervision, especially on the authority and the number of different national and State bodies which may make wide-ranging inspections;

10. As regards the conditions for exercising a local elected mandate:

a. considers that the three-year term of office of local councillors and chiefs is too short for exercising responsibilities at the local level;

b. recommends that:

- i. the term of office be extended to four or five years;
- ii. consideration be given to lifting the restriction which prevents chiefs from serving more than two successive terms;

11. As regards financial resources:

a. acknowledges that Armenia's overall economic and financial position is weak, and that this to some degree explains the funding problems across the whole public sector and the especially acute under-funding of local government;

b. considers that:

i. the State tax agencies have little incentive to collect land and property taxes, while the communities' lack of resources and limited access to information databases (and to the cadastre service, which is run nationally) have seriously undermined their capacity to dispose of their own appropriate financial resources;

ii. the financial regime arising from the Law of 7 May 2002, although well designed in principle, in practice leaves local authorities badly under-funded, and that almost no significant income is derived from sources over which the local communities themselves have control;

c. regrets that:

i. since 1996 no funding has been provided by the State for delegated powers;

ii. no process of financial equalisation has been put in place between the districts of Yerevan;

d. notes that the local communities' revenues are derived mainly from direct state subsidies and that this in itself makes the communities highly dependent upon the state;

e. welcomes the gradual transfer to the communities of the function of collecting local land and property taxes on individuals which is now in progress, and notes the significant increase in the level of tax-collection which has resulted from this transfer;

f. suggests:

i. in particular that the local communities be given the right to decide the rates of local taxation and to vary their own fiscal resources within the limit of the law;

ii. that different tax-sharing models be further considered;

g. recommends that:

i. a financial mechanism for funding delegated powers be introduced;

ii. the Armenian authorities make the equalisation mechanisms more transparent and that they be based on reliable economic and statistical data;

iii. the relevant ministries and State agencies (such as the Ministry of Finance and the State Committee of Cadastre and Tax Administration) should co-operate fully with the local communities in developing a sound and sustainable system of local finance;

iv. a process of financial equalisation between the Yerevan districts be introduced;

12. As regards municipal property:

a. welcomes the recognition in the law of the right of local communities to possess assets, while acknowledging that the management of municipal property is a new sphere of activity in Armenia;

b. notes that the process of registration arising from the Law on State Registration of Property Rights of 1999 has proved slow and complicated, with local communities needing to pay high registration fees which discourage them from applying to exercise the registration function;

c. recommends that such application fees be reduced, in order to encourage local communities to apply to register local property;

d. suggests that information available through the Cadastre Service be improved and that it be based on reliable economic and statistical data;

e. recommends the Armenian authorities generally to put into effect a transfer of property to the local level in accordance with the principles set out in CLRAE Recommendation 132 (2003) on municipal property;

13. As regards the status of Yerevan

a. while acknowledging that the position of a capital city needs special recognition, considers that the condition of local democracy in Yerevan needs reform;

b. considers that the functions discharged by the districts in Yerevan are too limited;

c. recommends:

i. that the Mayor of Yerevan should be democratically elected, instead of being appointed by the President of the Republic of Armenia, and that the structure of local self-government across Yerevan should be reformed, giving consideration to a two-tier structure, within a reasonable time-frame;

ii. with this in mind, that special attention be paid by the Armenian authorities to the status of Yerevan in the course of any future constitutional reform;

14. As regards the rural communities:

a. notes that the law gives all communities the same responsibilities, regardless of their size;

b. acknowledges that many rural communities are unable to discharge most of their functions, chiefly because of an acute lack of financial resources;

c. considers that special attention must be paid to the rural communities where, at present, local self-government is at its weakest;

d. suggests the following solutions in this respect (see also the next paragraph):

i. a strengthening of the existing provisions in the Law of 7 May 2002 to enable and require the combination of smaller local authorities into unions of communities for the discharge of their principal functions;

ii. the creation of a two-tier system of local self-government in Armenia with democratically elected authorities capable of taking responsibility for major local functions;

15. As regards inter-community co-operation:

a. believes that local authorities must have the right to form inter-community unions and the right to belong to associations (both domestic and international, as required by Article 10 of the Charter) to protect and promote their common interests;

b. considers that a facility to form such unions will be an important means of strengthening the impact of small rural communities in Armenia, but notes that there are at present only a small number of them in the country and that their legislative basis is not developed at all;

c. without prejudice to existing small communities, considers that in many ways such inter-community co-operation will enable local authorities to discharge their main functions;

d. recommends the Armenian authorities to legislate on a sound basis for the setting up of long-term and sustainable inter-community unions across the country and to introduce incentives of different kinds which will encourage the smaller communities to see the benefits of them;

16. Urges the Armenian authorities to implement Congress' recommendations made following the last local elections, namely those which concern accuracy of voter lists, the level of deposits payable by candidates, political balance on electoral commissions and equal access to media of candidates.

17. As regards assistance provided by the Council of Europe:

a. recommends the Committee of Ministers of the Council of Europe to enhance its legislative support and its assistance programmes (if necessary in co-operation with the European Union and other international organisations represented on the ground) in such fields as the training of local elected representatives and civil servants (especially in financial management, general management, budgeting, and strategic planning);

b. invites the Committee of Ministers to transmit this Recommendation to the Armenian authorities and to AGO Group of the Committee of Ministers within the framework of the country's commitments as a member State of the Council of Europe;

c. recommends the Parliamentary Assembly to take note of the above comments and recommendations in the course of monitoring the implementation of commitments undertaken by Armenia.