

REGIONALIZATION AND SOLIDARITY: PRINCIPLES AND RECOMMENDATIONS OF THE CONGRESS OF THE COUNCIL OF EUROPE

*Marie-Madeleine Mialot Muller*²⁴

Preamble

The Council of Europe is an international organization that aims at promoting human rights, the consolidation of democracy and the rule of law in Europe among its 47 member States and beyond. Its interest in regional democracy is anchored in the belief that in order to be truly effective, democracy must operate at different levels: there can be no regional democracy without intermediate local and regional authorities, because it is at these levels that democratic and public-spirited demands of citizens can be most effectively and appropriately satisfied.

The promotion of territorial democracy and local and regional governance is at the heart of the mission of the Congress of local and regional authorities of the Council of Europe. As a pan-European political assembly made up of 636 elected representatives – regional and local city counsellors, mayors and presidents of regions – representing over 200 000 communities of 47 European countries, the Congress of the Council of Europe strives to strengthen the autonomy of territorial authorities. Its work is based on a key text, i.e. the European Charter of Local Self-Government that was open to signature in 1985, and it specifically oversees the implementation of European common principles and standards to protect the rights and the independence (political, administrative and financial) of local authorities as well citizens' participation at the local level. The Congress encourages decentralization and regionalisation, as well as cross-border cooperation between cities and regions.

As part of its neighbourhood policy, the Council of Europe cooperates with the Kingdom of Morocco. The 2012-2014 priorities for Morocco were identified in cooperation with Moroccan authorities to underpin Morocco's democratic transition process and assist the country in taking up national challenges in connection with human rights, the rule of law and democracy. Local and regional democratic governance are among the priorities of this cooperation.

This presentation will be divided into three parts:

- I. Reminder of the Reference Framework for Regional Democracy of the Council of Europe
- II. Evolution of regionalisation in the countries of the Council of Europe (draft report: Marie-Madeleine Mialot, France)
- III. Regions and territories with special status in Europe (rapporteur: Bruno Marziano, Italy)

I. The Reference Framework for Regional Democracy of the Council of Europe

Unofficial equivalent of and necessary complement to the European Charter of Local Self-Government but without binding effect, the Reference Framework has an important symbolic value for the "Standards" it contains have been approved by the Council of Europe's Conference of

²⁴ Member of the Chamber of Regions of the Congress of Local and Regional Authorities of the Council of Europe, Rapporteur on Regionalisation.

c) Relations with other levels of government:

- i) Autonomy is key;
- ii) The various levels of power are organized based on the principle of mutual respect. Cooperation is possible;
- iii) Consultations must be held with the regions when decisions are made on matters that affect them.

d) Relations with state structures:

- i) Regional councils must be involved in the decision-making process;
- ii) Control must only aim at ensuring respect for the rule of law;
- iii) Mutual loyalty and equality of dignity: they involve respect for unity, governance and the territorial integrity of the State.

2) Regional bodies and internal organization

- The principle of self-organization;
- The principle of a Representative Assembly elected by direct universal suffrage and executive functions;
- Conditions of office of regional elected representatives, remuneration and freedom of expression;
- Regional administration and staff.

3) Financing

- Regional councils must have resources commensurate with their powers;
- Financial equalization and transfers:
 - * Equalization must be defined and make it possible to correct the impact of skewed resources.
 - * Transfers must be based on pre-established rules and must not undermine the fundamental freedom of exercising discretionary policy.
 - * Any transfer of competency must be followed by a transfer of corresponding financial resources.
- National and international relations are possible (cooperation agreements, etc.).

II. Evolution of regionalisation in the countries of the Council of Europe

The Bureau of the Congress mandated it to prepare a study on regionalization in member States of the Council of Europe. This study will provide the basis for comprehensive work and drafting of a report to Congress for which I am a rapporteur. We shall be looking at the main trends and issues to reassess the state of play in regionalization under the European Committee on Local and Regional Democracy (2007)²⁵.

A group of expert members of the Group of Independent Experts on the European Charter of Local Self-Government was established to assist us. The working group developed a very detailed questionnaire on central panels of evaluation of regionalization processes. By way of example, the following questions were asked:

- How are powers defined? Are they exclusive or shared, are they fully delegated powers?
- What are the relations between the regions and other levels of government? What kind of control are regions subject to? How is this control different from controls at other levels? What about legal and constitutional protection? How has the situation recently evolved? What kind of control of legality and/or efficiency is organized? What about the obligation to obtain prior authorization or confirmation for an act to become effective? Do they have the power to cancel a decision?

²⁵ Document CDLR(2008)02

Resources

- On what basis are resources distributed, in keeping with what competences?
- How are investments defined (direct or indirect investments)?
- What is the share of regions in the national public debt?
- Where do resources come from: The State? The region? What is their margin of freedom?
- What kind of financial control? What information?

Finally, in March 2013 Congress organized a roundtable on the impact of the crisis on regionalisation (reduced margin of manoeuvre of local and regional authorities)²⁶. The following themes were looked into:

- reduction in transfers of powers;
- transfers of powers without adequate resources;
- merger of territorial levels;
- lesser acknowledgment of social needs;
- unequal distribution of tax resources.

The roundtable came to the following conclusions:

- regionalisation is not a threat to national unity, excessive centralization creates frustration; it can be a means of preventing conflicts for it allows minority cultures to express themselves;
- growing regional nationalism can be a mere side effect of the crisis or a threat to European political stability;
- regions with special status have historic, cultural and linguistic specificities. Should this status be extended?

III. Special-status regions

Bruno Marziano's report²⁷ aims at highlighting special status related issues. By granting a region wider powers, the special status gives it the opportunity to develop its own political and constitutional system and hence express its diversity and its autonomy without questioning the structure of the State. National and international representation of the region (through bilateral cooperation with the State and international bodies) and in-depth consultation with the public (through referenda or an assembly) is also a feature of regions with special status. The report aims at promoting special status to strengthen territorial democracy. It underscores, on the one hand, the advantages of the special status and, on the other, gives a panorama of the situation in Europe by insisting on what remains to be done. Many regions would indeed greatly benefit from the special status but what is lacking is often the political will of central authorities.

The special status comes in response to a specific situation: geographic, economic, cultural, linguistic, historical...which makes the region reluctant to homogenous state governance. It thus addresses the failures of regionalization and has many advantages:

- it improves territorial governance;
- it counterbalances separatism, it helps prevent and solve territorial disputes;
- it guarantees cultural diversity;
- it guarantees territorial integrity and improves national unity.

²⁶ Roundtable entitled "Regionalisation and devolution in Europe in a context of economic crisis".

²⁷ Rapport, draft recommendations and resolution on regions and territories with special status in Europe approved by the Governance Committee of the Congress of the European Council on 3 June 2013 and submitted for discussion and adoption at the 25th Session of the Congress, 30 October 2013.

The report insists on the fact that the special status has to be tailor-made and meet particular aspirations in the best possible way. The report contains a comparative analysis of European cases while identifying global trends.

1. Financial organization

a) Financial principles

- Own-resources that can be freely used:

- o Own-resources with fixed portions of national taxes (very few regions currently have the ability to raise taxes);
- o Other regional resources and taxes: authorities can freely choose to invest their own-resources and have political discretion to exercise their powers.

- Financial equalization:

- o Regions with a special status benefit from equalization schemes or are exempt from contributing to the national financial equalization scheme;
- o Solidarity mechanisms must be based on pre-established rules adopted on the basis of objective criteria. One must avoid the state using its global powers to coordinate public finances to unilaterally limit the financial autonomy of those regions.

b) Main institutions

- Clear pre-established rules of financial regulation are implemented: method of calculation of the fixed portion and of the variable portion of the tax transferred to the region; rules on the margin of discretion related to the national tax rate; regular reviews of established rules;
- financial relations-related dispute prevention and settlement mechanisms (joint committees, for instance);
- importance of the existence of independent judicial remedies to settle disputes;
- clear rules must be established to allow for adaptation of the mechanisms and implementation of simplified procedures.

2. Scope of autonomy

- Protection of fields of competences

- o It must be mentioned in the Constitution and defined further in the legislation;
- o There can be no amendment without the consent of the authorities concerned.

- Political autonomy in their field of competences;

- Division of competences: it must be clearly established knowing that some competences are not exclusive. Indeed, in certain crosscutting areas, cooperation and consultation procedures must be established.

What fields of competences? Three categories can be mentioned:

- Protection of cultural, linguistic and ethno-national specificities (culture, heritage, education, training, sports, local media);
- Regulation of the territory's socio-economic and infrastructural needs (urban planning, environmental protection, construction, trade, road transport, water and energy supply);
- police and justice related competences – wide variations.

The report makes the following recommendations:

- Member States' awareness should be raised on this issue; exchanges of view and experience have to be encouraged;
- the Committee of Ministers is invited to better use the various types of special statuses to settle territorial and regional problems and to involve Congress, the Parliamentary Assembly

and the European Commission for Democracy through Law (Venice Commission) in the development of statuses;

- Congress should take part in a crosscutting review of the conditions that must be met for successful regional autonomy.

Conclusion

The Council of Europe and its Congress of Local and Regional Authorities defend the principle of multi-level governance and through this the usefulness of regional government. It does not favour any particular type of structure and organization.

It aims at setting standards and at looking into the future. In the case of the Reference Framework for Regional Democracy, principles have to be adopted for sound constitution and democratic management of this level of government based on democratic legitimacy, which abides by the rule of law and fosters mutual respect between the various levels of government while giving regional authorities effective capacity for action.

With regards to Mr Marziano's report or the one I am responsible for, our organization needs to develop territorial democracy further and analyse in detail the conditions for greater regional autonomy.

We are convinced that regional democracy leads to enhanced participation of citizens and consequently improves territorial governance and cohesion – an undeniable added value for enhanced regional autonomy. In this context, the special autonomy status can make it possible to better answer citizens' aspirations, especially when citizens don't want to be assimilated or to accept homogenous rules. A special status can also act as a counterweight to separatism for it provides an option for a negotiated solution to territorial issues, a possibly healthy alternative to disputes.

My colleague Mr Marziano has shown us that it is indeed possible to manage differences within a State by legislative action, without undermining the unity and the coherence of the State. On the contrary, the existence of various types of special statuses, reflecting the specific needs of a territory and its population, can lead to greater integration than uniform or unitary systems.

Experience has shown us that, where they exist, these types of special territorial autonomy are compatible with State unity and can also help preserve its territorial integrity.

