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The promotion of local self-government along Council of Europe borders

Report

Committee on the Environment, Agriculture and Local and Regional Affairs

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Summary

The Parliamentary Assembly has always been convinced of the importance of effective local self-government in reinforcing democratic values. It has always stressed that local authorities are one of the main foundations of any democratic regime and has supported the implementation of the European Charter of Local Self-Government.

The Assembly has also always held that territorial communities should be entitled to co-operate – with due regard to the responsibilities of the State – with other territorial communities in the same State and with their counterparts in other States in order to carry out tasks of common interest.

The Assembly considers that it would be useful for the Council of Europe to establish links with the countries at the frontiers of the geographical area it covers, with a view to co-operation in local self-government matters and transfrontier co-operation. It also wishes to reaffirm the need to ensure effective local self-government in the member countries of the Council of Europe and, in particular, those at its frontiers.

The Assembly declares itself convinced that increased co-operation could contribute to establishing democratic values, local self-government and the application of the principle of subsidiarity as the common denominator for all local and regional authorities in the countries concerned.

A. Draft recommendation

1. The Parliamentary Assembly emphasises the importance of local democracy for better ensuring that the principles of democracy prevail in political institutions, and points out that the Council of Europe has always made sure that true local democracy is established and respected in its member states. It was to this end that the European Charter of Local Self-Government (CETS No. 122) was adopted in 1985, and this has become the Council of Europe legal instrument of reference for safeguarding democratic local authorities.

2. The Assembly also emphasises the role of international co-operation at all levels, and particularly among local and regional authorities, which the Council of Europe also strives to promote, especially through the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (CETS No. 106).

3. It notes that the Council of Europe has practically reached its geographical limits and that it has helped to put in place an extensive European area of democracy that is homogeneous, in terms of the major principles and values which it endeavours to safeguard and develop in accordance with the objectives laid down in its Statute. A reminder of this fact was given in the Final Declaration issued by the 3rd Summit of Heads of State and Government of Council of Europe member States, which took place in Warsaw on 16 and 17 May 2005.

4. The Assembly considers that the Council of Europe and the continent of Europe, drawing confidence from their democratic success, must not from now on seal themselves off inside their delineated area of democratic security, at the risk of isolating themselves politically from the rest of the world. This would be all the more serious as globalisation has had adverse effects on Europe, although it can also lead to some benefits, particularly in terms of the publicising and sharing of its successes.

5. Politically, Europe has based itself on a system of universal values which it must not only guarantee in its own countries, but should also share with other populations and disseminate outside its own borders. Europe must pass on its democratic experience and display good political sense, persuading its neighbours to adopt and implement the same values, so as to guarantee political continuity and stability beyond its own limits.

6. The Assembly considers that, to achieve this, the Council of Europe must draw on its unparalleled achievements and experience, making use of both its legal and political arsenal (conventions, recommendations, etc) and its organs and other institutions (Congress, Venice Commission, etc). Local democracy and local self-government could pave the way to more fully developed co-operation with countries bordering the Council of Europe area.

7. To this end, all Council of Europe member states must without fail live up to the ideals laid down in the Statute and the commitments they have made to recognising and implementing democratic principles, particularly those relating to local self-government. The Assembly notes that certain member states have yet to complete their internal reforms to establish local democracy fully in line with the provisions of the European Charter of Local Self-Government, whether through appropriate legislation or through implementation of existing laws.

8. The Council of Europe itself and its member States ought also to engage in co-operation with non-member countries along the Organisation's boundaries, particularly in relation to local democracy. In this context, member States on the outer rim of the Organisation's area should be particularly active in promoting the values of the Council of Europe, and especially local self-government.

9. In this context, the Assembly welcomes and supports the initiatives of the Congress on the creation of a new kind of Euroregion to develop co-operation within extensive transfrontier regions, thanks to structures encompassing all the responsible authorities, similar to those of the Adriatic Euroregion. It also supports the proposal to set up a Council of Europe centre for interregional and transfrontier co-operation.

10. The Assembly wishes to avoid the same conflicts happening along the outer boundaries of the Council of Europe as happened in the past, causing severe problems between neighbouring countries and populations of Council of Europe member states, creating divisions and splits, now overcome, largely thanks to co-operation activities promoted by the Council of Europe.

11. The Assembly therefore recommends that the Committee of Ministers:

11.1. invite all member states to sign and/or ratify the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (CETS No. 106) and the two Protocols thereto (ETS Nos. 159 and 169);

11.2. invite Andorra, France, Monaco, San Marino and Serbia to sign and/or ratify the European Charter of Local Self-Government (CETS No. 122);

11.3. provide for the two aforementioned conventions to be opened for signature by non-member states;

11.4. take the requisite steps and make the necessary contacts in due course so that non-member states adjacent to members of the Organisation sign the two aforementioned conventions;

11.5. invite at this early stage member states, and especially those on the outer rim of the Organisation, to develop co-operation with bordering states with a view to the latter recognising the principles set down in the two aforementioned conventions;

11.6. establish a political agreement and provide a legal framework to enable co-operation on local democracy to be developed with the countries adjoining Council of Europe member States;

11.7. instruct the responsible Council of Europe directorates and departments to make any helpful contacts with the authorities of bordering countries with a view to drawing their attention to the aforementioned conventions, so that the provisions of these may gradually be integrated into those countries' legislation.

12. The Assembly invites the national parliaments of member States to co-operate with the parliaments of the countries bordering Council of Europe member States with a view to the inclusion in their legislation of the principles of the European Charter of Local Self-Government and the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities;

13. The Assembly invites the Congress of Local and Regional Authorities of the Council of Europe to:

13.1 disseminate the two aforementioned conventions and their principles among local authorities and their associations in the countries bordering the Council of Europe;

13.2 promote co-operation between local and regional authorities of member States and those of countries bordering Council of Europe member States, particularly in respect of local self-government.

B. Explanatory memorandum by Mr Renzo Gubert, Rapporteur

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I. Introduction

1. The Assembly has long had a particular interest in promoting local self-government. Local self-government has gradually established its position as one of the fundamental elements of a democratic regime: the political changes in Europe after 1989 showed that no imposed system can survive without a democratic foundation and living local communities in which the citizens are involved and support the authorities on the basis of relations of mutual trust. Local self-government therefore appears to be an essential element of democratic stability.

2. Local self-government denotes "the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population" (Art 3 of the European Charter of Local Self-Government, ECLSG).

3. The Assembly has observed that there are areas both within and immediately outside the frontiers of the Council of Europe where the relative absence of genuine local self-government is accompanied by political instability. Thus, at the internal frontiers of the Council of Europe, in countries such as the Russian Federation or Turkey, certain current problems mainly associated with unresolved territorial issues show very clearly the importance of genuine local self-government, which would probably alleviate the difficulties.

4. The Assembly has also always stressed the right of local authorities, as the entities closest to the citizen, to co-operate with one another. As the preamble to the European Convention on Transfrontier Co-operation between Territorial Communities or Authorities stipulates, "co-operation between territorial communities or authorities at frontiers in such fields as regional, urban and rural development, environmental protection, the improvement of public facilities and services ..." is to be encouraged, "to contribute in this way to the economic and social progress of frontier regions". Such frontier co-operation agreements are also vehicles for peace and solidarity between the peoples of Europe and those at its frontiers, particularly in cases where frontiers have divided people with the same culture, language and traditions.

5. As the Council of Europe already has 46 Member States, transfrontier co-operation therefore represents a useful way of extending to non-member countries the values it has upheld since 1949, particularly in the matter of local self-government.

6. This was recalled at the Third Summit of Heads of State and Government of the Council of Europe, held in Warsaw on 16-17 May 2005, where it was decided in the Action Plan approved on that occasion to “develop further transfrontier co-operation, as necessary, and standards of democracy and good governance...”.

7. Since this report cannot be exhaustive, it merely gives examples of the situation in a few countries situated on the Council of Europe’s frontiers. Within its frontiers, and bearing in mind that many member states have no external land frontiers, we have chosen two large countries, Russia and Turkey. Among countries outside our frontiers, we have chosen the countries of the Maghreb because of their historical ties with Europe, and Kazakhstan, whose parliament concluded a co-operation agreement with the Parliamentary Assembly on 27 April 2004¹.

II. The promotion of local self-government as a duty of the Council of Europe

8. The promotion of local self-government has long held a highly important place among the values upheld by the Council of Europe, for the following reasons:

- it is a fundamental principle of political organisation in that it requires the participation of the citizen and mutual trust between government and governed;
- it reflects the common conviction that economic growth, sustainable development, good public services and full democratic participation will be provided more efficiently if government institutions are not over-centralised and if they apply the principle of subsidiarity;
- its development and reinforcement in recent decades have contributed to the reinforcement of democracy in Europe.

9. The Council of Europe’s positive experience in the field of local self-government shows that decentralisation, increasingly applied in all the Member States, has contributed to a reinforcement of democracy and that the principles laid down in the ECLSG can be successfully put into practice. The principle of local self-government thus appears to be not only a political element essential to the workings of a democracy, but a factor in integration. Examples that may be cited include the Åland Islands (Finland), where autonomy was granted in 1921, Alto-Adige-Südtirol (Italy) where it was granted in 1947² and, even more recently, Gagauzia (Moldova) in 1990 and Crimea (Ukraine) in 1992. Local or regional autonomy may thus contribute to the reinforcement of territorial unity and national solidarity, particularly by accepting cultural differences within a country.

10. The case of Spain is another example of success in the field of local and regional democracy, in respect of the speed with which it established and developed a system of local and regional self-government after the promulgation of the new Constitution in 1978, a system that among other things enabled a solution to be found to the demands of Catalonia and the Basque Country.

11. Some of the regions covered by this report suffer from numerous internal tensions as a result, in particular, of the policy pursued by the countries concerned with regard to minorities, which are often excluded from the interplay of institutions, or because those regions do not accept their minority status, situations that lead to tensions at national and international level – particularly in frontier relations. These areas are focal points for instability in or close to Europe, which should be stabilised. The relationship

¹ Co-operation Agreement between the Parliamentary Assembly of the Council of Europe and the Parliament of the Republic of Kazakhstan, concluded on 27 April 2004 (see Doc. 10212, Appendix II, of the Parliamentary Assembly).

² See Assembly Recommendation 1609 (2003) on the positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe.

between people and the Nation-State produces very different results in different places and at different times and it may seem legitimate for any people to regard itself as a nation and consequently wish to manage its own affairs³. This is why the development of local self-government, transfrontier co-operation and the protection of national minorities may appear to present an ideal way of managing such situations⁴.

→ There are thus two reasons for promoting local self-government: first, the values it represents and, second, the particular situation of the areas where it should be introduced or extended.

12. The Council of Europe is particularly well adapted to take this initiative. First, because of the nature of the institution as a forum for interchange and dialogue: either through its intergovernmental co-operation or, since 1957, thanks to the Congress of Local and Regional Authorities of the Council of Europe⁵, which provides a privileged meeting place where representatives of local and regional authorities can discuss common problems, compare experience and express their point of view, e.g. by making recommendations to governments. The Congress also helps new member States to establish genuine local and regional self-government.

13. The Council of Europe has also developed co-operation with the regions covered by this report: for example, the Mediterranean region conferences were started on the initiative of the Assembly and the Congress, the first being held at Marseilles in 1985 and the sixth and latest at Varna in 2000.

14. The Assembly and the Congress were also responsible for the European Conferences on Frontier Regions, the first being held in Strasbourg in 1972 and the eighth took place in Lutsk (Ukraine) in September 2005.

15. The Congress has recently launched a number of new initiatives in the field of regional transfrontier co-operation, the first being the establishment of an Adriatic Euroregion⁶. The Assembly gave this project its full support in Resolution 1446 (2005) on co-operation and sustainable development in the Adriatic basin. Other, similar initiatives are to be promoted in the Black Sea and Baltic.

16. Moreover, the Congress and the Federation of Russia have together proposed the setting-up of a Council of Europe Centre for inter-regional and transfrontier co-operation⁷, and the Committee of Ministers is currently considering this project.

17. There are also a number of important Council of Europe legal instruments which provide a basis for future work and for passing on experience with local self-government and territorial co-operation:

18. The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, which was signed at Madrid in 1980 and entered into force on 22 December 1981, is intended to encourage and facilitate the conclusion of agreements between regions and municipalities, on both sides of frontiers, within the jurisdiction of the Contracting Parties. There are two Additional Protocols to the Convention, November 1995 (entered into force on 1 December 1998) and May 1998 (entered into force on 1 February 2001).

19. The European Charter of Local Self-Government, which was signed in Strasbourg in 1985, and came into force on 1 September 1988, requires the Parties to take measures to ensure the political, administrative and financial autonomy of local authorities.

³ Assembly Recommendation 1735 (2006) on the concept of "nation", adopted on 26 January 2006.

⁴ "Motion for a resolution on transfrontier co-operation in preserving the identity of national minorities", Doc. 9163, 2001.

⁵ Then known as the "European Conference of Local Authorities".

⁶ Recommendation 187 (2006) and Resolution 212 (2006) of the Congress on the Adriatic Euroregion.

⁷ Recommendation 185 (2006) 1 of the Congress on the proposal to set up a centre of the Council of Europe for inter-regional and cross-border co-operation.

20. Moreover, the work of the Conference of European Ministers responsible for Local and Regional Government also resulted, in particular, in the Helsinki Declaration on Regional Self-Government adopted at the 13th Session of the Conference held on 27 and 28 June 2002, which supports the development of regional self-government in the member States of the Council of Europe. At the 14th Session, held in Budapest on 24-25 February 2005, the ministers emphasised the importance of regional self-government and explicitly advocated good local and regional governance.

→ *The possibilities for transfrontier co-operation between the member States of the Council of Europe and non-member States at its frontiers depend in particular on the degree of local self-government of those States. The numerous instruments and structures available in the Council of Europe make it an ideal vehicle for the promotion of local self-government in the countries situated at its frontiers.*

III. Problems and prospects of local self-government in the areas covered by the report

i. Local self-government in the countries concerned

21. The way in which the principle of local self-government is applied varies widely from one country to another, depending on their history and traditions. Local self-government still leaves much to be desired in some of the countries of central and eastern Europe, where there was none at all for a long time. The Congress of the Council of Europe monitors the situation concerning local self-government in the member states, and this is also covered in the Assembly's monitoring reports.

a) Member States of the Council of Europe

- **The Russian Federation**

22. The structure of local government in Russia is based on the 1993 Constitution (which guarantees local self-government) and the 1995 Federal law on local self-government (which recognises and expounds the principles of local self-government). Russia comprises three levels of authority: the Federation, the Subjects of the Federation, and the local authorities. The Federal State had no policy on regionalisation in the 1990s. Provinces and municipalities accordingly made their own arrangements. The 89 Subjects of the Federation are listed in the Constitution and consist of 20 republics plus Chechnya, which bear the names of the titular nation; regions and territories, *oblasti* and *kraya*, which bear the names of their capital cities. The regions are represented at federal level in the Council of the Federation, the upper chamber of the Parliament.

23. In 2000, a federal government reform set up seven "federal districts", with the task of ensuring that regional law was in line with federal law. Also in 2000, the composition of the Council of the Federation (which represents the subjects of the Federation) was modified. In 2003, two new federal laws were passed on "the basic principles governing organisation of the legislative and executive organs of state power in subjects of the Federation of Russia" and "the principles governing organisation of local self-government in the Federation of Russia"⁸.

24. There is constant debate about the powers accorded to the Regions and Republics. The Constitution established a difference of status: the Republics are governed by a President, a head of government and an assembly, under the terms of a Constitution; the Regions have a governor and an assembly, under the terms of a Charter. The Republics, unlike the Regions, are also called "States". These differences in status are purely formal, since the powers are equivalent in each case, but it is widely supposed that the difference means that the Republics have greater autonomy and more power.

25. The local authorities, unlike the federal administration and the provincial authorities, are not regarded as State organs. It is to these municipal and district authorities that the term « local self-government» applies.

⁸ Congress document CG(11)5 Part II on local and regional democracy in the Federation of Russia.

26. In recent years, many major reforms of territorial administration in Russia have brought the situation more into line with the ECLSG criteria. However, further progress is needed, particularly with financial resources and with bringing the laws of subjects of the Federation into line with the new framework law on local self-government⁹.

27. Russia ratified the ECLSG on 5 May 1998. However, at the end of 2004 a draft law provided for direct election of regional governors to be replaced by a system under which the regional assemblies would be called on to approve a candidate proposed by the President of the Federation of Russia in each case. The Venice Commission decided that the new bill manifestly violated the principle that federated entities should independently determine the composition of their executive and legislative authorities. The bill would mean that half of the representatives in the Council of the Federation, which was responsible for supervising the president, would be indirectly appointed by the president, which was contrary to the principle of separation of powers¹⁰.

28. In its Resolution 1455 (2005) on honouring of obligations and commitments by the Russian Federation, the Assembly urged the Russian authorities to “review the recently adopted legislation on the elections of regional governors inasmuch as it affects the composition and the independence of the upper house of the Russian Parliament...”.

- **Turkey**

29. Although some legal features of local and regional government in Turkey hark back to the Ottoman Empire and the early days of the Turkish Republic, the present structure results from the 1982 Constitution and is based on the French system imported in 1930.

30. Turkey is divided into 81 provinces or *iller*, which are themselves divided into districts or *ilçe* and sub-districts or *bucaklar*. The provinces and districts are ruled by governors and sub-governors, *vali* and *kaymakam*, appointed for an unlimited period by the central government and answerable to the Ministry of the Interior. An exception was made in 1987, in the case of six provinces in the south-east of the country, representing the region of the Kurdish minority. This exception remained in force in two regions until 30 November 2002 when it was finally rescinded.

31. The local authorities are divided into three levels: special provincial authorities, municipalities and villages. Under the terms of the Constitution, the local authorities are administered in accordance with the principle of decentralisation (Art. 127 par. 2). However, they are subject to central government control through the governors (Art.127 par. 5). This control covers the decisions, actions and activities, organs and staff of the local authorities. Despite the recent constitutional reforms (2001) the Turkish authorities appear to be reluctant to abandon controls and move forward in the direction of greater local self-government. Turkey is still a unitary, centralised State in which local self-government is conspicuous by its absence even though Turkey ratified the ECLSG on 9 December 1992.

32. In June 2004, in view of the reforms introduced and progress made since 2001, the Assembly decided to close the monitoring procedure which had been open for Turkey since 1996¹¹. However, it called on Turkey to “reform local and regional government and introduce decentralisation in accordance with the principles of the European Charter of Local Self-Government to compensate for the underdevelopment of certain regions, particularly south-east Turkey...” (para.23, VIII of Resolution 1380 (2004)).

⁹ Recommendation 143 (2004) and Resolution 171 (2004) of the Congress on local and regional self-government in the Federation of Russia.

¹⁰ See Doc 10568 of the Parliamentary Assembly.

¹¹ Resolution 1380 of the Parliamentary Assembly on honouring of obligations and commitments by Turkey and accompanying, Doc. 10111.

33. Moreover, the Congress of Local and Regional Authorities of Europe of the Council of Europe recently produced a report on local and regional democracy in Turkey¹². This takes note of progress made, and particularly legislative progress concerning the municipalities and provinces. However, it is still necessary to develop and implement these new laws, and pass further ones (particularly on financial resources), to ensure that powers are really exercised independently.

34. A number of shortcomings were noted at municipal level, particularly concerning the actual concept and scope of local self-government (Articles 3 and 4 of the ECLSG), structures and resources (Article 6) and financial resources (Article 9). and also at provincial level, where central government still weighs too heavily.

35. The Congress accordingly recommends changes in laws and regulations for the purpose of achieving improved local self-government, more fully in line with the ECLSG, which Turkey has already ratified.

36. Such measures might also help, among other things, to improve the situation in South-East Turkey, where the Kurdish minority lives. In this connection, the Assembly regretted, in Resolution 1390 (2004), that "Turkey has still not ratified the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages".

b) *Non-member states*

- **Tunisia**

37. Generally speaking the territorial organisation of modern Tunisia is based partly on ancient Islamic traditions under which the territories of the empire were divided into *wilayat* (provinces under a governor) representing the State, and partly on the French system which entailed, among other things, the division of national territory into municipalities and the establishment of a central administration assisted by decentralised or devolved bodies.

38. Before the French protectorate, Tunisia had been a Turkish province ever since its conquest by Sinan Pasha on 13 September 1574. The Tunisian administration was consequently a regional not a State administration. The Bey was the *wali* or governor appointed by the Sultan. Under the French protectorate – 1881-1956 – in order to establish the French State's authority in Tunisia, the country was divided into *Caïdats* or regions. These formed the basis for the present territorial divisions. With the coming of independence in 1956, the *Caïdats* were transformed into governorates (*wilayas* – equivalent to French *départements* or provinces).

39. There are 24 governorates, ruled by governors appointed by the President. Each governorate is divided into "delegations" comprising several municipalities. There are 260 delegations, and these are sub-divided into 2,056 *imadas*. Each delegation is ruled by a delegate. The territorial assembly, like the municipal councils, is composed of elected and appointed members. In the towns, the municipal councils deal with roads, street lighting, waste disposal, and public contracts.

40. Territorial organisation remains highly centralised, and there is no evidence of any local self-government structures.

- **Morocco**

41. Morocco has a tradition of local self-government going back several centuries, although the old forms of territorial organisation bear little resemblance to contemporary forms of decentralisation. The colonial interlude – 1912-1956 – did not entirely destroy the old tribal structures, but the modern administrative machinery, established in accordance with the French tradition of centralisation, bears the

¹² Recommendation 176 (2005) of the Congress on local and regional democracy in Turkey and Document CG(12)25 Part II.

strong imprint of the colonial power. The French protectorate did nevertheless introduce some decentralising measures, establishing a great many municipal authorities in the principal towns, ports and a few smaller centres that were being developed, but assemblies were not elected by universal suffrage, nor did they have decision-making status or any real administrative and financial autonomy.

42. In 1959, the country was split up into 801 municipalities with municipal councils elected by universal suffrage. In 1962, the Kingdom of Morocco adopted a Constitution which recognises the local authorities and lays down the principle that they are to be managed by democratically elected assemblies. The municipalities have gradually acquired more powers, in particular under the 1976 law reinforcing their financial capabilities, improving the training of the territorial civil service, and strengthening the local authorities' legal instruments and control mechanisms.

43. A major administrative reform was carried out in 1997, opening the way to decentralisation, with territorial administration sub-divided on three levels: 16 major administrative regions (actually economic regions) ruled by a "Wali" (governor) and a regional council, a second level consisting of 45 provinces and 26 *wilayas* and 1,547 municipalities. Governors are appointed by the King and are answerable to him.

44. In spite of this reform, the regions have no powers of their own and the municipalities are still subject to the governors' administrative control. Morocco remains a highly centralised country with no real local self-government.

- **Algeria**

45. The process of decentralisation in Algeria, initiated by the Constitution of 10 September 1963, has gradually become established over the years. The 1967 Municipalities Code defined the municipality as "the basic political, administrative, economic, social and cultural territorial community" and "the planning level in the process of democratisation and production of the development plan".

46. The territorial system was reorganised in 1984 and the number of authorities (municipalities and *wilayas*) considerably increased. Power in the 1541 municipalities is vested in the municipal public assembly (the equivalent of a municipal council), elected by universal suffrage. The assembly then elects its chair (the mayor) and vice-chairs (the deputy mayors).

47. The same system applies in the 48 *wilayas* (the equivalent of a French *département*), with a *wilaya* public assembly, which elects its chair and vice-chairs. But the *wali* (or *préfet*) is the Government's delegate. As such, he has the task of implementing its decisions and informing it of the *wilaya's* requirements.

48. In Algeria too, decentralisation is more a matter of meeting economic and regional development requirements than of giving territorial communities genuine self-government in the political sense of the term. It would be more accurate to speak of devolution of central government than of decentralisation.

- **Kazakhstan**

49. Kazakhstan has 14 oblystars (provinces) and 3 towns with special status: Almaty, Astana and Baikonur (the last administered by Russia, because of the space centre), following the Soviet system of administrative divisions.

50. The Constitution of 30 August 1995 introduced the system of local authorities (Art. 85) and also recognised local self-government (Art. 89).

51. The local assemblies or *maslikhat* are elected. They have very limited powers. Local executives (governors and the mayors of Almaty and Astana) have been appointed by the President of the Republic since 1998. They are responsible for management at local level and implementing national policies. The

officials in charge of districts or small municipalities are appointed by local authorities. The President of the Republic may dismiss governors and mayors of large towns.

52. Moreover, the 39 members of the Senate are elected by indirect suffrage (32 elected by the 14 provincial councils and the councils of Almaty and Astana, which are themselves appointed by the President of the Republic, the other seven being appointed by the President of Kazakhstan)¹³.

53. There is no genuine local-self-government in Kazakhstan.

→ *Each country therefore exhibits a different degree of local self-government, but no genuine local self-government exists in countries on the Council of Europe's external frontiers.*

ii. *Improvements in local self-government in the countries concerned*

54. Local self-government has improved in four respects:

a) *Recognition of local and regional authorities*

55. Increasingly systematic constitutional recognition of territorial communities has been observed, prefiguring the existence of genuine local self-government. Thus, in Kazakhstan, the Constitution of 30 August 1995 recognises both local self-government (Art. 89) and the system of local authorities (Art. 85). Similarly, in Russia, the new federal framework law of 2003 on "the general principles governing the organisation of local self-government in the Russian Federation" contains guarantees with regard to the establishment of local self-government throughout the territory of the Russian Federation and recognises local authorities.

56. Moves have also been observed to increase the number of local and regional authorities, moves which reinforce the existence of local self-government. Thus, in Morocco, regions were established in 1996/97, a measure that opens up further prospects of State decentralisation; and in the Russian Federation, 7 federal districts with jurisdiction over the Subjects of the Federation were established under the law of May 2000, each covering 6 to 18 Subjects of the Federation.

→ *There is thus a two-fold improvement in the recognition of local authorities, i.e. constitutional and institutional.*

b) *Increase in the representativeness of local and regional authorities*

57. A tentative but real determination to reinforce the legitimacy of local and regional authorities has also been observed. In Tunisia, the reform of the legal framework governing the activity of regional councils (Law n° 89-11 of 4 February 1989) reinforces and improves the representativeness of members of the regional council; similarly, it should be noted that in Algeria, 7 million people cast their votes in the October 2002 local elections for representatives of 48 provinces and 1541 communes, and that 24 different political parties participated in those elections.

58. In Russia, the President has repeatedly emphasised the need to have a genuine party system, involving increased participation by the federal political parties at regional and eventually at local level. The voting procedure for the election of regional assemblies was changed on 12 June 2002 by an amendment to the federal law on basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum.¹⁴

c) *Development of the private sector and relaxation of centralism*

¹³ Doc. 10306 of the Parliamentary Assembly.

¹⁴ *Local and Regional Democracy in the Russian Federation*, §54, Dr G. Rhodio and H.U. Stöckling, CLRAE report, CG(11)5 part II, May 2004.

59. The moves to decentralise and promote local self-government are also generally accompanied by the devolution or even the privatisation of some State activities, a sign of relaxation in the centralising tradition. This trend has been observed in Tunisia in particular.

60. For 20 years or so after Tunisian independence, the main purpose of the decentralisation of certain central administrative services was to reinforce the State presence at regional and local level and to bring certain services closer to the citizen. As the country's needs for services developed and its economic and social policies evolved, a process of decentralisation was established. This change of direction was marked essentially by:

- the establishment of autonomous public undertakings, responsible for managing specific activities for the State;
- the privatisation of certain activities.

61. In Morocco, one of the government's main concerns in the past few years has been to redefine the tasks of the administration in the light of the State's new role. One of the measures proposed, with a view to encouraging the development and stabilisation of society and the economy, was to apply the principle of decentralisation in order to consolidate a new concept of public services based on the real needs of the citizen. To that end, a programme of privatisation was launched in 1993, and in 1999, for example, franchises were granted for water and electricity supplies.

d) Increase in the powers conferred on local and regional authorities

62. Lastly, and this is the most important move, there is evidence of an increase in the powers conferred on territorial communities and of greater involvement of those communities in the numerous international programmes conducted in these countries.

63. As regards the increase in the powers conferred on the local authorities, the case of Tunisia may again be cited in respect of a number of reforms:

- the reinforcement of the authority and the decision-making powers of governors (Law n° 89-11 of 4 February 1989 and Decree 89-457 of 24 March 1989); as a result, provinces now enjoy a higher level of autonomy, and governors have extensive powers of deliberation and decision. The governor is the central government's representative in the region and the chair of the regional council.
- the reform of the legal framework governing the activity of the regional councils (Law n° 89-11 of 4 February 1989) reinforces the powers of the regional council and will enable it to take crucial decisions in future.
- the three reforms of the law establishing the municipalities (Law 75-33 promulgated on 14 May 1975) by Law n° 85-43 of 25 April 1985, Law 91-24 of 30 April 1991 and Law 95-68 of 24 July 1995. These successive reforms, particularly the last, conferred greater autonomy on the municipalities with respect to decisions and initiatives, and defined their roles and powers and their relations with others involved in municipal development.

64. The case of Algeria may also be cited, where the reforms are still ongoing but appear to be working towards greater local self-government. The government intends to introduce local government reforms as part of its policy of decentralisation. The Committee for the Reform of the Mission and Structure of the State has completed an initial study of local authorities, which emphasised the importance of giving these authorities more autonomy and more responsibility¹⁵. A broad start has been

¹⁵ *Algeria, administrative reform, innovation and maintenance*, p.13, Centre for Administrative Innovation in the Euro-Mediterranean Region (CAIMED), 2004.

made on the process of decentralisation/devolution in Algeria and it still has priority among the various State and public administration reforms that are being undertaken¹⁶.

65. At the same time, there is evidence of greater readiness to take the local authorities into account as players in the implementation of international programmes, particularly those conducted by the UN and the EU.

66. In Morocco, the government has endeavoured to increase the involvement of local authorities in social development programmes and work conducted in co-ordination with the UN and the World Bank, particularly the few programmes in the campaign against poverty that concentrate specifically on the regions.

67. Turkey is participating in the Agenda 21 programme¹⁷, which involves giving more responsibilities to the local authorities and sharing power with the central administration. By the same token, the current reform effort and the affirmation of the principle of subsidiarity require additional responsibilities to be allocated to local entities, as provided for in the 1998 law¹⁸, which however has not yet entered into force.

68. In Kazakhstan, the TACIS¹⁹ programme that has been set up provides wide scope for transfrontier co-operation.

iii. Obstacles and need for external co-operation

69. There are three major problems to the establishment of genuine local self-government:

- Local elections do not meet democratic standards, in particular the standards of the Council of Europe: in Kazakhstan, the Council of Europe recorded serious shortcomings in democratic procedures in the elections held in September 2004²⁰. Similarly, in Russia, in March 2005, the Duma adopted on its first reading a law amending Section 85 of the Federal Law of the Russian Federation on the general principles governing the organisation of local self-government in the Russian Federation. The purpose of this draft law was to grant the organs of power of the Subjects of the Federation the right to determine the way in which heads of local authorities are elected, which could have affected the appointment of mayors. But the European Charter of Local Self-Government, ratified by Russia, provides that local authorities must be democratically elected.²¹

- There are still very few local structures in some countries. The number of local authorities may not be a guarantee of local autonomy but it most certainly contributes to it, and a small number is usually a sign that democracy is not working.

- Lastly, local authorities are still under State control: in Tunisia, the municipalities are still subject to numerous controls from three sources – the governor, the Ministry of the Interior and the Ministry of Finance. These controls relate both to deliberations on specific issues and to the

¹⁶ A. Abdenour, *Réforme administrative et gouvernance en Algérie : défis et options prioritaires*, Meeting on priorities in innovating governance and public administration in the Euro-Mediterranean region, Naples 17-20 May 2004.

¹⁷ Programme adopted at the 1992 United Nations summit. It was incorporated in the United Nations Development Plan for collaboration between the public and private sectors, at the *City Summit* in Istanbul in 1996.

¹⁸ 1998 Law on the division of responsibilities between central and local governments, the regulation of public service systems, and amendments to various laws relating to local government.

¹⁹ The European Union's TACIS programme was set up in 1991 in order to help the former Soviet Union countries to make the transition to democracy, to reinforce their democratic and legal structures and to develop a market economy. It has a budget of 3.138 million euros for the period 2000-2006.

²⁰ Doc.10306 of the Parliamentary Assembly.

²¹ "Russian mayors a matter for concern in the Council of Europe's Congress of Local and Regional Authorities", Council of Europe press release, 22 March 2005.

commune's investment and development plans. This also applies to other countries, such as Morocco, Algeria, Kazakhstan and Turkey.

70. As a result, local authorities do not contribute to local development, a situation that is confirmed by a number of factors:

- they have no qualified staff: in Morocco, they often drawn from a local elite ill-prepared for the job they have to do;
- they have insufficient resources: in Tunisia, the municipalities' scope for action is limited by a lack of funds. In Kazakhstan, there has been no mention of financial autonomy for local structures, despite the 1999 budget reforms. In Morocco, the main problem is the discrepancy between the very small budgets allocated to the local authorities and the decisions taken by central government, which they are required to implement.
- and lastly, they have no powers and legal instruments to give effect to their actions.

71. Local authorities are insufficiently known by the "public", who do not yet realise that local self-government can provide protection against arbitrary decisions.

72. In the Russian Federation, there is no tradition of local democracy in the European sense of the term. The territorial communities' administrative organs had been kept within a rigid vertical command system. The challenge for the municipal authorities is to avoid losing the small measure of confidence the people still have in them. There is a big difference between towns that depend largely on State subsidies and those that have an independent income of their own from undertakings established in their territory.

→ As a result, generally speaking, local authorities do not always inspire confidence in the population or form part of the democratic systems that are developing in these countries.

IV. Conclusions

73. The governments of the Member States of the Council of Europe should endeavour, first, to comply with the Committee of Ministers' recommendation²² inviting them to ratify the Madrid Convention and its protocols and urging the States Parties to the Convention to continue their efforts to establish co-operation. The governments of these member States should also comply more fully with the European Charter of local self-government. They should also take into account the recommendations of the Assembly and of the Congress.

74. Then, in view, on the one hand, of the disparities in the matter of local self-government observed in the countries situated on the borders of the Council of Europe in comparison both with one another and with the Member States of the Council of Europe, and, on the other, of the acknowledged importance of local self-government, the Council of Europe should also encourage non-member frontier States to include the principles of local self-government in their legislation and develop transfrontier co-operation between Member States of the Council of Europe and neighbouring States.

75. It is essential, in particular:

- to encourage the involvement of the citizen and establish mutual trust between government and governed so as to ensure that local self-government is a fundamental principle of State organisation;

²² Recommendation REC(2005)2 of the Committee of Ministers adopted on 19 January 2005.

- to apply the principle of subsidiarity and reflect the common conviction that economic growth, sustainable development, good public services and full democratic participation will be achieved more efficiently if government institutions are not over-centralised;
- to contribute to the reinforcement of democracy in Europe, in particular by including minorities in the democratic and institutional process.

76. However, in view of the political nature of local self-government, its content must also:

- respect the sovereignty and identity of States and their freedom to determine their own internal organisation with due regard to common principles,
- be sufficiently broad to recognise the wide range of democratic forms of local self-government.

Reporting committee: Committee on the Environment, Agriculture and Local and Regional Affairs

Reference to committee: Doc. 9964, Reference no. 2889 of 25 November 2003

Draft recommendation adopted unanimously by the committee on 29 June 2006

Members of the Committee: Mr Walter **Schmied** (Chairman), Mr Alan Meale (1^e Vice-Chairman) (alternate: Mr Paul **Flynn**), Mr Renzo **Gubert** (2^e Vice-Chairman), Ms Elsa **Papadimitriou** (3^e Vice-Chairperson), Mrs Marisa Abbondanzieri, Mr Ruhi **Açikgöz**, Mr Gerolf **Annemans**, Mr Ivo Banac (alternate: Mr Miljenko **Dorić**), Mr Rony **Bargetze**, Mr Jean-Marie **Bockel**, Mrs Pikria Chikhradze, Mr Valeriu **Cosarciuc**, Mr Osman **Coşkunoğlu**, Mr Alain **Cousin**, Mr Taulant Dedja, Mr Hubert **Deittert**, Mr Tomasz Dudziński, Mr Adri Duivesteyn, Mr József Ékes, Mr Bill **Etherington**, Mrs Catherine Fautrier (alternate: Mr Christophe **Spiliotis-Saquet**), Mr Adolfo Fernández Aguilar, Mr Christopher Fraser (alternate: Mr Nigel **Evans**), Mr György Frunda, Ms Eva Garcia Pastor, Mr Fausto Giovanelli, Mr Peter Götz, Mr Vladimir **Grachev**, Mr Kristiin **Gunnarsson**, Mr Poul Henrik Hedeboe, Mr Mykhailo Hladiy, Mr Anders G. **Högmark**, Mr Rafael **Huseynov**, Mr Stanislaw Huskowski (alternate: Mr Edward **Maniura**), Mr Jean Huss, Mr Fazil **İbrahimli**, Mr Ilie **Ilaşcu**, Mr Mustafa **İlicali**, Mrs Fatme Ilyaz, Mr Ivan **Ivanov**, Mr Bjørn **Jacobsen**, Mr Jaroslav Jaduš, Mr Gediminas **Jakavonis**, Mrs Danuta **Jazłowiecka**, Mrs Liana Kanelli, Mr Karen Karapetyan, Mr Orest Klympush, Mr Victor **Kolesnikov**, Mr Zoran Krstevski, Mr Miloš Kužvart, Mr Ewald **Lindinger**, Mr Jaroslav Lobkowicz, Mr François Loncle, Mr.Theo **Maissen**, Mr Giovanni Mauro, Mrs Maria Manuela **de Melo**, Mr José Mendes Bota, Mr Gilbert Meyer, Mr Goran Milojević, Mr Vladimir Mokry (alternate: Mr Valeriy **Sudarenkov**), Mr Žarko Obradović, Mrs Carina **Ohlsson**, Mr Pieter Omtzigt (alternate: Mr Leo **Platvoet**), Ms Gordana Pop Lazić, Mr Cezar Florin Preda, Mr Jakob Presečnik, Mr Lluís Maria de Puig, Mr Jeffrey Pullicino Orlando, Mr Maurizio Rattini, Mr Fidas **Sarikas**, Mr Herman Scheer, Mr Rainer Steenblock, Mr Zoltán Szabó, Mr Kimmo Tiilikainen, Mr Nikolay **Tulaev**, Mr Iñaki **Txueka**, Mr Geert Versnick, Mr Rudolf **Vis**, Mr Klaus Wittauer, Mr G.V. Wright, Mr Kostyantyn Zhevago

N.B. The names of those members present at the meeting are printed in bold.

Secretariat to the Committee: Mr Alfred Sixto, Mr Bogdan Torcătoriu and Mrs Marine Trévisan