

Recommendation 43 (1998)¹ on territorial autonomy and national minorities

The Congress,

Having regard to the declaration on “Federalism, Regionalism, Local Autonomy and Minorities” adopted on 26 October 1997 in Cividale del Friuli;

Having regard to Resolution 52 (1997) on “Federalism, Regionalism, Local Autonomy and Minorities”, adopted at its fourth session;

Considering that the application of the principle of subsidiarity can contribute positively to solving the problem of protecting national minorities;

Recommends that the Committee of Ministers of the Council of Europe adopt a recommendation to the member States based on the draft appended hereto.

APPENDIX

DRAFT COMMITTEE OF MINISTERS RECOMMENDATION TO THE MEMBER STATES ON TERRITORIAL AUTONOMY AND NATIONAL MINORITIES

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, particularly for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Reaffirming the principles contained in the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities, which have to be considered as a general approach to the problem;

Considering that the protection of national minorities – meaning Europe's historical minorities – is a question of human rights;

Convinced that the application of the principle of subsidiarity, whereby decisions are taken at the level closest to citizens, can contribute positively to resolving the problem of protecting national minorities;

Considering that the principle of subsidiarity takes concrete form in the recognition and the institution of territorial autonomy, which may consist in local or regional self-government;

Bearing in mind the fact that the concept of territorial autonomy does not necessarily imply that the powers assigned to a particular level of government – local, provincial or regional – are the same, but that, in relation to the same level of self-government, powers may be distributed differently in accordance with economic, geographical, historic, social, cultural and linguistic requirements;

Affirming that the use of the subsidiarity principle to assist in solving the problem of national minorities is not detrimental to the unity of the state, but should be an opportunity to strengthen that state's cohesion and solidarity, while, at the same time, having regard to the growing interdependence within national populations and the peoples of Europe;

Having regard to Recommendation n° 43 (1998) of the Congress of Local and Regional Authorities of Europe (CLRAE);

RECOMMENDS:

A. To member States whose administrative subdivisions of state are already established when the members of a minority within a given territorial authority constitute a substantial proportion of the population, justifying specific protective measures:

a) to avoid changing the geographical boundaries of the authority in question for the purpose of altering the composition of the population to the detriment of the minority;

b) to consider the possibility of merging or encouraging partnership between authorities in order to bring together the members of a national minority in such a way as to justify protection;

c) to grant the authorities in question wide-ranging powers, defined by law, in all fields that can afford an effective protection of the members of the minority and mainly in the fields of language, education and culture;

d) to recognise the legitimacy in territories inhabited by minorities, of the existing specific legal provisions governing the main areas in which the minority's distinctiveness is expressed;

e) to recognise the right of these authorities to join together with other authorities sharing the same characteristics, for the purposes of culture or language promotion and, in the case of border authorities, to establish transfrontier links for co-operation with similar authorities in neighbouring states;

f) to regrant these authorities the competence to rule on the use of regional or minority languages in their elected bodies and administration, in their relations with the citizens and, in accordance with Article 10.2g of the European Charter for Regional or Minority Languages, to adopt correct traditional forms of place-names in regional or minority languages, if necessary in conjunction with the name in the official language(s);

g) to make provision in the local finance system for resources and/or transfers enabling these authorities to cope with the increased and specific responsibilities arising from the presence of members of a national minority;

h) to grant territorial authorities the power to put in place mediation and collaboration arrangements to promote harmony between the majority and minorities;

i) to establish a guarantee such as to ensure an appropriate level of representation for members of minorities on the elected bodies of the territorial authorities, as well as on the bodies representing these authorities at the level of the federal or national state;

B. To member States planning to change their systems of administrative subdivisions, and in particular to create regional tiers of government in territories where national minorities represent a substantial part of the population, that, in addition to the provisions in A (a) to (i) above, they take measures:

a) to guarantee the creation of territorial authorities in such a way as to prevent dispersal of the members of a national minority and to afford them effective protection, unless other economic, social or geographical considerations duly motivated make this impossible;

b) to grant the territorial authorities -local or regional- appropriate powers to provide adequate protection for minorities;

c) to consult the populations concerned regarding the geographical boundaries of the authorities in question according to the provisions of Article 5 of the European Charter of Local Self-Government;

d) to ensure that, where regional authorities have already been created, they also enjoy substantial powers in the sphere of regional development, so that they can take full advantage of the potential offered by history, tradition and multiculturalism.

¹ Debated by the Congress and adopted on 27 May 1998, 2nd sitting (see document CG(5)11, draft Recommendation presented by Mr Martini, Rapporteur and Mr Öhman, Co-Rapporteur)