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Regions and territories with special status in Europe

Governance Committee

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[Resolution 361 \(2013\)](#) ²

[Recommendation 346 \(2013\)](#) ³

[Explanatory memorandum](#) ⁴

Summary

Regions with special status exist in several member states of the Council of Europe. Such regions enjoy more numerous and stronger guaranteed legislative, administrative and financial powers. They are established with a view to responding to particular needs of certain territories due to, inter alia, their history, geographical position, culture or linguistic characteristics, without challenging the overall state structure. This report, based on a comparative analysis of special status regimes across Europe, demonstrates, in particular, that the principles of regional democracy are more firmly guaranteed in special status regions.

Regions and territories with special status in Europe

RESOLUTION 361 (2013)²

1. A number of Council of Europe member states have granted special status to specific regions as a means of addressing the specific identities and the common wish of their populations to have a greater say in the management of their own affairs.
2. The Congress study of the functioning of such regions³ shows that they often have stronger and more effective regional democracy and can provide a model for other states to follow, providing that certain conditions are met, such as properly defined competences and well defined relations and working arrangements with the central authorities.
3. The persistence of regional conflicts within some member states suggests that there is further scope for the provision of specific constitutional arrangements for regions with strong identities. The Congress believes that special regional autonomy status can be an effective counterbalance to secessionist tendencies and that the peaceful and prosperous development of the European space will depend on making greater progress in internal conflict resolution. This will require the political will to pursue peaceful political dialogue to identify and negotiate suitable legal and constitutional solutions and develop satisfactory models of decentralised democratic governance for the regions concerned.
4. Therefore the Congress resolves to:
 - a. work with the Committee of Ministers and the Venice Commission to identify indicators and characteristics of successful regions with special status and to develop effective models of such status;
 - b. examine the attribution of legislative powers to specific regions as a factor in successful regional development ;
 - c. assess the functioning of existing special region status arrangements in its country monitoring of the implementation of the European Charter of Local Self-Government;
 - d. pay particular attention in the framework of this monitoring, in its political dialogue with the central governments of countries with internal regional problems, tensions or conflicts, to the potential of the 'special status' model for achieving a negotiated settlement in those conflicts;
 - e. continue to give the democratic institutions of such regions representation in its Chamber of Regions;

f. regularly discuss developments and exchange good practice on this subject, in particular in its Chamber of Regions.

Regions and territories with special status in Europe

RECOMMENDATION 346 (2013)⁴

The Congress of Local and Regional Authorities of the Council of Europe,

1. Recognising:

- a. that Europe's unique character and strength lies in its diversity;
- b. the huge progress the continent has made in developing a large variety of constitutional and political systems to accommodate this diversity;
- c. that Europe has a pioneering role in the field of multi-level governance, in developing, articulating and defining the working methods and complex inter-relationships of democratic governance at several different levels (local, intermediate, regional, national and supra-national).

2. Convinced that:

- a. much of the future of the European space, its future peaceful and prosperous development will depend on making greater progress in conflict prevention and resolution, which will require the political will to pursue peaceful political dialogue and to move forward on identifying and negotiating legal and constitutional solutions, to develop satisfactory models of decentralised democratic governance for regions with specific issues and identities;
- b. the regional level of self-government remains an under-exploited structure for the political and economic development of European states and for responding to the legitimate democratic demands of their citizens;
- c. special regional autonomy status can be an effective counterbalance to secessionist tendencies.

3. Recognising that the special status enjoyed by regions of some European states has brought stability and prosperity to those regions.

4. Bearing in mind:

- a. the 2002 Helsinki Declaration on Regional Self-Government;
- b. the 2009 Council of Europe Reference Framework for Regional Democracy.

5. Welcoming the resolve of the Committee of Ministers to seek peaceful political solutions to European conflicts.

6. Therefore asks the Committee of Ministers to:

- a. invite member states to make greater use of the special status model, as a realistic option for a negotiated solution to regional territorial issues, including frozen conflicts;
- b. involve the Congress, the Parliamentary Assembly and the Venice Commission in this work;
- c. examine how special regional status can contribute to addressing the territorial issues faced by countries with which it is cooperating in the framework of the Council of Europe's policy towards neighbouring regions;
- d. include, in the context of its political dialogue with the Congress, a transversal examination of the conditions for successful regional autonomy.

Regions and territories with special status in Europe

EXPLANATORY MEMORANDUM

I. Introduction⁵

1. Regions with special status exist in several member states of the Council of Europe. Such regions represent particular forms of territorial authorities between the central government and local authorities. They enjoy different powers as compared to other sub-national entities of their respective state and are established with a view to responding to particular needs of certain territories due to, inter alia, their history, geographical position, culture or linguistic characteristics.

2. While there is no uniform model of regions with special status – nor there could be, as each case aims at resolving peculiar needs of the territory concerned – this report provides a comparative analysis of the phenomenon across Europe. The analysis of European special status regions examines their scope, background and legal guarantees (part II), the implementation of the principles of regional democracy in those territories (part III), the main powers vested with the special status regions, including external relations, and the procedures for their implementation and their guarantee (part IV), the financial arrangements (part V). It concludes by highlighting the essential elements of special status autonomy (part VI).

3. The Council of Europe's interest in the potential of special status for better territorial governance and for the prevention or solution of conflicts over certain territories is not new. Already in 1999 the Congress of Local and Regional Authorities of Europe adopted a seminal "Recommendation 70(1999) on local law/special status", based on a study by the Congress [CG/GT/CIV (5) 3], which promotes the introduction or preservation of forms of special status "with the

aim of seeking solutions to current conflicts in Europe". Furthermore, in 2003 the Parliamentary Assembly of the Council of Europe adopted Recommendation 1609 (2003) on "Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe" (see also Report Doc. 9824). A motion for a "Resolution of ethnic conflicts in Council of Europe member states" was presented by several members of the Parliamentary Assembly in 1999 (Doc. 8425), stressing the importance of special status as a means for conflict resolution. The potential of special status arrangements as instruments for conflict resolution is highlighted also by the Commission for Democracy through Law (Venice Commission) including in its "General Legal Reference Framework to Facilitate the Settlement of Ethno-Political Conflicts in Europe", adopted in October 2000 (CDL-INF(2000)16, esp. p.6). The Congress Recommendation 278 and Resolution 293 (2009) on "Regions with legislative powers: towards multi-level governance" and the recent Schausberger report of the Committee of the Regions of the EU⁶ are also relevant in this respect.

4. While the reasons for granting special status to specific parts of a state's territory may vary, it is commonly accepted that such asymmetric distribution of powers enables tailor-made solutions and may constitute an important governance tool in contemporary complex societies, based on the rule of law. To cope with such complexity, power is increasingly distributed in non-uniform ways among various tiers of authority.

5. Special status arrangements for sub-national units not only are consistent with the overarching public international law principle of territorial integrity of states: they also help preserve such integrity by addressing specific claims without challenging the unity of the state. As provided in Congress Recommendation 240 (2008) on the European Charter of Regional Democracy, "the relationship between regional authorities and central government shall be based on the principle of mutual loyalty and equal dignity and shall entail respect for the unity, sovereignty and territorial integrity of the state" (article 9.1.).

6. In some case, especially when special status is established in order to accommodate ethno-cultural minority groups, it is considered to be the most genuine expression of internal self-determination of peoples (although the term is used sparingly in legal acts – see below, 72). In any event, the protection of specific groups and territories by means of special territorial autonomy is to be balanced with the principle of respect for "central government's economic and social cohesion objectives and to central government activities aimed at achieving comparable living conditions and balanced development throughout the national territory, in a spirit of solidarity between regional authorities" as specified by article 10 of Congress Recommendation 240 (2008).

7. This report comparatively analyses internal constitutional rules on special status regions, irrespective of the terminology used in each country. Its aim is to provide a comparative framework on how these arrangements work, with special regard to the implementation of regional and local democracy – as defined primarily in the Council of Europe's European Charter of Local Self-Government and in the Reference Framework for Regional Democracy – in these particular conditions.

II. Special status: scope, background and legal guarantees

a. The scope of special status

8. All territorially compound states, be they called federal or regional, are based on a certain degree of asymmetry. This means that in every federal or regional system – even if the powers of the sub-national units are constitutionally the same – they are not exercised in the same way. Thus, asymmetry and differentiation are innate in each form of territorial division of power. However, the different exercise of the same competence does not amount to special status, nor does the provision – common to most federal states – of peculiar territorial settings or rules of representation for some sub-national entity, such as, *inter alia*, capital cities or districts in most federal countries, city-states in Germany, the so called "half-cantons" in Switzerland (although this term is no longer in official use after the constitutional amendment of 1999).

9. Special status entails the legal guarantee of more powers (legislative and/or administrative and/or financial), at least quantitatively in terms of legislation, and normally privileged forms of representation and negotiation – often by means of bilateral channels with the state – for specific territorial authorities. Such authorities always enjoy political and administrative autonomy, while formal legislative autonomy depends on the constitutional setting of each country. For example, Madeira and the Azores enjoy political autonomy and wide competences, even though they cannot pass formal laws. Similarly, the *Collectivité territoriale* of Corsica has overall a broader autonomy as compared to other regions in France although formal law-making is pre-empted. Political autonomy of the concerned territory is expressed by an own elected assembly and an accountable government.

10. As a rule, special status only affects specific territories (regions) of a state where there is no wish or need to introduce a fully-fledged federal system. To extend special status to all territories of the state would contradict in essence the very rationale of a special treatment. However, in some case the constitution can provide an open framework for the enjoyment of special status to most sub-national entities such as in Spain. To identify special status regions, it is essential that the constitutional or legislative framework also provides specific procedural traits for some territories, as is the case in Spain (articles 143, 148, 149.3, 150 and 151 of the constitution).

11. Conversely, a constitutional division of competences allowing to exercise specific additional powers for the regions that so decide does not amount to a special status. Rules of this kind are to be found in Germany in some enumerated areas of the concurrent legislative competence (article 72.3 Grundgesetz), in Italy, where "ordinary" regions can be transferred a number of additional competences (article 116.3 constitution, although such provision has not been used in practice) and in France, where the territorial *collectivities* can "experimentally" derogate to the legislative or regulatory provisions for a specific item and for limited time (article 72 constitution).

12. Furthermore, the establishment of different categories of sub-national units entrusted with different competences (such as in Belgium, with Regions and Communities, or in the Russian Federation, composed of [Republics](#), [Krais](#), [Oblasts](#), [cities of federal significance](#), an [autonomous oblast](#) and [autonomous okrugs](#)) is essentially a means to make special status a structural element of the whole constitutional architecture of a country, thus departing from the idea of

special status⁷.

13. The so-called “frozen conflicts” are often regarded as special status regions by the states they de facto broke away from, even though these territories do not accept such status and consider themselves as independent states. This is the case, for example, of the break-away region of Transnistria, which according to the legislation of the Republic of Moldova is an “autonomous territorial unit with special legal status” (law no. 173/2005)⁸. While it is generally considered, including by the Council of Europe’s Parliamentary Assembly, that special status autonomy might be a tool to resolve such conflicts peacefully by reasonably accommodating the positions at stake (see also above, 3, 5 and 6), the “frozen conflicts” are not included in the category of special status regions due to the absence of common acceptance of such status by the involved parties.

b. Background, motives and content of special status

14. There are two main reasons why certain territories of a state are granted special status. The first is a peculiar geographic position that has the effect to isolate the territory from the rest of the state: very often special status regions are in fact islands and as such they express specific needs in terms of self-government⁹. Occasionally, exclaves also enjoy particular forms of autonomy, such as the Nakhchivan Autonomous Republic in Azerbaijan¹⁰. The second is a particularly strong cultural, linguistic or religious diversity of a territory’s dominant population as compared to the majority population of the state. Often these two elements are combined.

15. Economic disparity should not be a reason for granting special status. In this respect, it is worth recalling Article 10 of the Draft European Charter of Regional Democracy (Congress Recommendation 240 (2008): “The exercise of regional self-government shall contribute to the central government’s economic and social cohesion objectives and to central government activities aimed at achieving comparable living conditions and balanced development throughout the national territory, in a spirit of solidarity between regional authorities.

16. There are also other pushing factors for granting some differential treatment to given territories. These include the presence of specific socio-economic conditions or some historical legacies. Among the former, examples include the special regimes recently established for the Greater London Authority and the Rome Capital Area. Examples of the latter are the so called Swiss “half cantons”. However, these particular regimes are either non regional in nature (such as the Greater London Authority or the Rome Capital Area) or limited to minor elements (such as the representation in the upper chamber for the Swiss former “half cantons”) and do not amount to full special status in the meaning of this Report.

17. Special status is normally expressed by a constitutionally or legally entrenched guarantee of more autonomy for specific territories (see above, 9). This in most cases entails more numerous legislative and administrative powers as compared to other territorial authorities belonging to the same state. Other criteria for identifying special status are special procedural or institutional channels for cooperating with the state or to be represented in central institutions (see below, III.c) and special financial arrangements (see below, V). While special and more numerous competences are always a criterion for special status, asymmetrical financial and procedural regimes can also affect other, non-special territories: financial benefits are in fact very often granted to economically weak areas irrespective of their constitutional status, and special forms of representation might be due to historical (like the so called Swiss “half Cantons”) or other reasons, like a proportionally better representation of smaller territorial units (like for the composition of second chambers of federal parliaments).

c. Legal guarantees and entrenchment of special status

18. Special status must be based in law. Normally the entrenchment has constitutional nature and is further specified in legislative and administrative acts. Constitutional guarantee – at least in the material sense, like for the devolved areas in the United Kingdom or for the Danish Home Rules on Greenland and the Faroe Islands – is an essential condition for legal certainty. Constitutional entrenchment is necessary since special status impacts on the principle of equality among the citizens of the same state.

19. Occasionally, special status regimes originate from and are based on international agreements. This is the case of, inter alia, South Tyrol in Italy (so called Gruber-Degasperi Agreement, 1946), Nakhchivan in Azerbaijan (Moscow and Kars Treaties, 1921) and (although not strictly in a formal sense) the Åland Islands in Finland (so called Åland Settlement, 1921). International anchoring provides an additional layer of legal guarantee to special status regions, as the infringement of existential elements of their autonomy can be challenged in international forums including in the International Court of Justice. More recent special status arrangements, such as the ones regarding Crimea in Ukraine and Gagauzia in Moldova, have been adopted with significant international participation, although no formal international guarantee is provided.

20. While the existence of a general right to autonomy under public international law is disputed and mostly denied, such a right is sometimes explicitly recognised by some domestic provisions. The right to autonomy can be defined as a constitutional right for all “nationalities and regions” of the state, as provided by article 2 of the Spanish constitution, or as a specific right of the population of a special status territory, as is provided by article 4 of the statute of the autonomous province of Vojvodina.

21. In most cases, the state constitution provides for the overall framework of special status regions, normally with ad hoc provision for specific territories. Only occasionally – like in the case of Spain – the constitution provides for a general constitutional right to autonomy potentially open to all regions. Quite exceptional is also the inclusion of detailed provisions in the state constitution itself, such as the Ukrainian constitution with regard to Crimea (title X constitution).

22. More detailed provisions on the functioning of special status regions are usually included in legal acts subordinated to the constitution. These are often constitutional or quasi-constitutional acts (organic laws and the like) enacted by the state parliament, normally after adoption by the regional assembly – and sometimes after confirmation by regional population in a referendum. In some cases the affected regions adopt their own statute or basic law (normally by

qualified majority and sometimes by involving the local population through a referendum) within the limits of the state constitution.

23. Such legal acts are usually entrenched and cannot be modified by simple majority. The essence of special status lies in fact it not being alterable, in its fundamental elements, by the arbitrary will of state law-makers. To the contrary, amendments to the essential elements of special status require, as a rule, negotiated procedures. On the other hand, the examples in the United Kingdom demonstrate that it is possible to have fluid constitutional arrangements, in which each case is treated on its specific merits, evolving step by step over a long period of time.

24. The adoption by referendum of the legal act establishing and regulating the special status normally gives additional legitimacy to such status, like in the case of the devolution acts of 1998 for Scotland, Wales and Northern Ireland. The status of the latter was remarkable in that it was settled in part through an international agreement between the Republic of Ireland and the United Kingdom, which constitutes part of the 1988 Good Friday Agreement, and involved referendums on both sides of the border. However, popular votes might be particularly controversial in case of tensions, internationally driven processes or post-conflict situations. Furthermore, popular support is in some situation controversial, like in the case of the Basque country: the majority of the Basque voters voted against the Spanish constitution (as the only autonomous community) but yet in favour of the autonomy statute which is based on this constitution.

III. Principles of regional democracy

25. In special status regions, principles of regional democracy are, as a rule, stronger entrenched and protected as compared to other regions of the respective state. The legal safeguards are similar to those provided for in federal countries, with the significant difference that they affect specific individual territories rather than just the community of the sub-national entities.

26. Special status autonomy is developed against the background of and taking in consideration three main general principles: subsidiarity, territorial cohesion and solidarity. These principles are general orientation criteria informing the detailed mechanisms and procedures aimed at achieving the necessary balance between different and sometimes diverging needs that special status arrangements are aimed to achieve. Subsidiarity implies that decisions should be taken as close as possible to citizens by ensuring that action by a higher level is justified in the light of the possibilities available at the various levels of government. Territorial cohesion aims at granting equal opportunities to citizens, regardless of where they live, by providing them with equitable conditions of access to public services, sustainable development and quality of life throughout the country, with due regard for the diversity of geographical and demographic situations. Solidarity implies that, in exercising their powers and responsibilities, regions refrain from taking steps that can jeopardise the overall structural balance and harm the common interests of the state, including by helping territories facing structural or occasional problems.

a. Protection of boundaries

27. As to the protection of boundaries – a principle laid down in article 5 of the European Charter of Local Self-Government (ECLSG) – the territory of special status regions is normally identified in the foundational act establishing the special status regime. As mentioned above (II.c), such act is, as a rule, entrenched so as to not be unilaterally amendable by simple majority by the state legislature. Therefore, not only the very existence of special status regions, but also their territorial delimitation is normally protected by entrenched provisions. However, depending on the constitutional design of each country, different degrees of legal guarantee of the protection of boundaries are to be found.

28. A first distinction concerns the criteria used to identify – and potentially modify – the borders of the special status regions. In most cases, the foundational acts of each special status regime list the municipalities, the administrative units or the territories (especially in the case of islands and archipelagos) that constitute the special status region. In some other case historical borders have simply been formalized in legal acts (such as in the case of the borders of Scotland and Wales with England). Finally, in some cases the legislative framework does not identify the territory but rather provides for the criteria to determine it. In Spain, the constitution establishes the procedure according to which provinces can establish autonomous communities (article 143). In Moldova, the Law on special legal status of Gagauzia (article 5) establishes that Gagauzia is composed of localities where Gagauzians make up more of 50% of the population and gives the option to hold a referendum on joining the Gagauz Yeri for municipalities with less than 50% Gagauz population.

29. A second important distinction regards the degree to which changes to the special regional boundaries, including amalgamation with other authorities, are possible. Based on the legal status of the special regime, the change of boundaries might require a constitutional amendment¹¹, sometimes even an international agreement or third party consent (as in the case of the Autonomous Province of Bolzano – South Tyrol), the approval by the citizens of the autonomous territory in a referendum (like for the territory of the autonomous province of Vojvodina) or a simple legislative amendment. In such latter case, the degree of consultation of the affected authorities or citizens is determinant. In the United Kingdom, it is contended that, since devolution acts were adopted by means of referendum in the devolved areas, their changes would require the same procedure, although formally there is no obligation to do so. It is worth noting that the Northern Ireland Parliament was unilaterally abolished in 1972 by the UK Parliament.

b. Supervision of acts and substitution

30. Following the principle laid down in article 8 of the ECLSG, the Council of Europe Reference Framework for Regional Democracy (MCL16(2009)11 of 03 November 2009, hereinafter “Reference Framework”) as well as the Helsinki principles of regional self-government (adopted in 2002 by the ministers responsible for local and regional government – hereinafter “Helsinki Principles”) establish that “any supervision of regional authorities by central state authorities shall normally only aim at ensuring their compliance with the law” (Helsinki principles, B4.1). Furthermore, “administrative supervision of regional authorities may be exercised only according to such procedures and in such cases as are

provided for by constitutional or legislative provisions. Such supervision shall be exercised ex post facto and any measures taken must be proportionate to the importance of the interests which it is intended to protect". (Helsinki principles, B4.2).

31. As to substitution, Congress Recommendation 240 (2008), article 44, states that "national or federal authorities' power of temporary substitution to act in lieu of regional authority organs may be exercised only in exceptional cases and under the procedures provided for by the constitution or by law. This power shall be confined to specific cases where regional authorities have seriously failed to exercise the competences vested in them and shall be utilised in accordance with the principle of proportionality in the light of the interests it is designed to protect". Furthermore, "the decision-making power resulting from a substitution measure shall be entrusted to staff acting solely in the interests of the regional authority concerned, except in the case of delegated responsibilities".

32. When special status regions are part of a state that encompasses also other forms of regional autonomies (as in Spain, Italy or France – departments and overseas territories), the rules on supervision of regional acts and substitution by the state are generally the same for all type of regions. Normally, substitution is possible only in exceptional cases of persistent violations of laws or international liability of the state resulting from a regional misconduct, as is typically the case of non-compliance with obligations arising from European Union law.

33. Conversely, when special status regions are the only regional authorities in their respective country, specific rules on supervision and substitution are established. These generally respect the principles mentioned above and sometimes go beyond by establishing specific guarantees. For example, all Danish laws must be submitted to the President (Lagmadur) of the Faroe Islands before they can enter into force on the autonomous territory. All the laws adopted by the Åland parliament need to be signed by the Finnish president within four months: the president can veto the laws in case of ultra vires legislation or if the law jeopardises the internal or internal security of the country, but in order to minimise the risk of a presidential veto, a mixed expert commission examines the laws before they reach the state president.

c. Right to be consulted and cooperation mechanisms

34. Special status has both a material and a procedural dimension. The former means in essence more and special powers (see IV below). The latter essentially consists in a wide range of rights to participate in decision-making, including to be involved and effectively consulted in state decisions affecting their competences, essential interests or the scope of their self-government. The more developed special status regions have direct bilateral channels with the state institutions and can veto unilateral state decisions affecting the core of their self-government.

35. As stipulated by the Reference Framework and Helsinki principles (B3.2), the involvement is ensured through representation in state decision-making bodies and/or through consultation between the state and the regional authorities concerned.

36. Nearly all special status arrangements provide for a guaranteed representation of the special status region in the state parliament, irrespective of the population ratio. This is of particular importance for small special status regions. Reserved seats in the Danish parliament are provided for the Faroe Islands and for Greenland, in the Finnish Parliament for the Åland Islands, in the French Parliament for Polynesia, in the Portuguese Parliament for the Azores and Madeira, etc. The asymmetric structure of special status autonomy can give rise to cases of over-representation and issues of legitimacy: this is the case, for instance, of the so called "West Lothian question", which means that Scottish members of the British parliament can vote on issues only affecting England while no reciprocity is given, since for devolved matters the Scottish parliament is competent.

37. In some cases, representation for the special status regions is established also in the state government. The president (Baskhan) of Gagauzia is automatically a member of the Moldovan cabinet and the presidents of Italian special regions have the right to participate in the state cabinet meetings when issues of their specific interest are discussed.

38. Even more importantly, for most special status regions institutional bilateral bodies or procedures are in place with a view to establishing direct channels for cooperation and to prevent political conflicts or judicial litigation. These instruments are either limited to specific issues or entrusted with a general competence. Particularly important in this regard are the joint commissions in place for each Italian special region. These are composed by equal number of state and regional representatives and draft the implementing measures (by-laws) for the respective autonomy statute. Such measures enjoy a higher rank as compared to the laws of both the state and the regional parliament.

39. In exceptional cases, special status regions enjoy veto rights over vital decisions affecting them, if the consultation mechanisms have not worked. For example, the Åland Islands have the right to veto international decision matters directly affecting their legislation (as expressed by the referendum on EU accession in 1994).

40. More frequently, special procedures are established in order for the special status authorities to be given time to adapt to state reforms or to make their voice heard at state level. In Greenland, all measures that affect or might impact on the island must be communicated in advance to the local authorities, which have in principle six months to take their stand. In the Autonomous Provinces of Trento and Bolzano-South Tyrol in Italy, state laws introducing fundamental socio-economic reforms enter into force only after six month in order to provide time to adopt the necessary local legislation adapting the principles to the specific needs of the special territories.

d. Legal protection

41. While consultation mechanisms and veto rights are essentially political in their nature, access to a judicial remedy in order to secure the free exercise of powers of regions with special status and the respect for the principles of regional self-government enshrined in domestic law makes it possible to settle conflicts according to legal rules. For this reason, legal protection is a fundamental element of the rule of law, on which regional democracy must be grounded.

42. In most cases, the judicial body entrusted with the adjudication of conflicts regarding competences of special status regions is the state constitutional court. The court can be called to resolve legal disputes by the bodies of the state

(normally the government) or of the special status authorities (more often the executive, sometimes the parliament). Normally, there is no legal rule regarding the presence of judges from the special status region in the constitutional court, although this might be provided for in practice in some case. There are those who argue for the creation of an additional supranational constitutional court at the European level to deal with legal disputes of this nature that are not able to be resolved at the national level. The Council of Europe's Venice Commission, which has long played a valuable advisory role with regard to new constitutional proposals, would seem well-placed to play a greater role in the definition of the competences of special status regions.

43. It is worth noting that where no constitutional court is in place, a functional equivalent is in charge with the resolution of litigation concerning the delimitation of competences: this is the case of, notably, the recently established supreme court of the United Kingdom, which has jurisdiction, *inter alia*, to resolve disputes relating to devolution issues, i.e. concerning conflicts of competence, the powers of the three devolved governments or laws adopted by the devolved legislatures. In some occasions, the courts can render advisory opinions on issues related to special status regions, such as in the case of the Supreme Court of Finland on matters regarding the Åland Islands.

44. Sometimes special status arrangements *de facto* limit the access to judicial adjudication. This is the consequence either of vague provisions that are therefore difficult to adjudicate in a court, as sometimes happens, for instance, for Gagauzia, or of a deliberate choice to resolve issues only at political level. For example, the bilateral treaties concluded after 1994 between Tatarstan and the Russian Federation on a number of subjects including economic policy, military camps, protection of the environment, etc., do not provide for a judicial settlement of conflicts and there is no clarity as to what should be the applicable law. It must be remembered that judicial adjudication of competence disputes is an essential element of local regional democracy based on the rule of law, as established by article 11 of the ECLSG and by article 21 of Congress Recommendation 240 (2008).

45. Particularly interesting is the conflict-resolution mechanism provided in Greenland (article 18 Home Rule Act 1978), which effectively combines political and judicial instruments. In case of disagreement about the exercise of competences, a special commission is tasked with the solution of the dispute. This commission is composed of two members appointed by the Danish government, two appointed by the autonomous government and three supreme court judges. If the four political representatives can find an agreement, the conflict is settled, otherwise it is adjudicated by the three judges.

e. Democratic representation and citizens' participation

46. Like any other regional or local authority vested with political power, special status regions must have a representative assembly. Such assembly is elected by direct, free and secret suffrage and in a multi-party system in all special status regions. The special status of the involved territories and the composition of the involved population often determine the presence of a peculiar political system in the special status territory, with regional parties sometimes being in power for very long time.

47. While assemblies are always elected, representatives of cooperation bodies between the special status authorities and the state are usually appointed or indirectly elected by the assembly or by the executive.

48. Most special status regions have a parliamentary system, whereby the executive and its head are appointed by the elected assembly. There are some instances, however, when the president of the region is directly elected by popular suffrage, such as in Gagauzia and in the Italian special regions with the exception of the autonomous province of Bolzano and the Aosta Valley. If the president is directly elected, the members of the regional government are appointed by the president and confirmed by the elected assembly; conversely, the directly elected presidents, while not answerable to the assembly, account to it of his/her acts (can be removed in exceptional circumstances by the State President and can be dismissed by the assembly, which in this case is automatically dissolved, art. 126 constitution).

49. Quite frequently, special status regions provide for wider use of direct citizen participation, such as referendums, citizens' assemblies, popular initiatives and the like, especially in smaller territories. According to Congress Recommendation 240 (2008), articles 4, 6.1 and 6.2, the exercise of citizens' right to participate in the management of public affairs shall be encouraged, and regional self-government shall comply with the principles of informed decision-making and evaluation of decisions made, as well as pursue aims of flexibility, openness, transparency, participation and public accountability.

50. Special status regions normally have their own assets, administration, staff and staff code. In Scotland and Wales, the civil service is not a devolved matter and civil servants are members and subject to the rules of the UK civil service, although they owe their loyalty to the devolved administration in first place.

IV. Main powers and procedures

a. Content and scope of self-government for special status regions

51. As affirmed by the Reference Framework and the Helsinki principle A1.2, "regional self-government denotes the legal competence and the ability of regional authorities, within the limits of the constitution and the law, to regulate and manage a share of public affairs under their own responsibility, in the interests of the regional population and in accordance with the principle of subsidiarity". In addition to that, special status consists in broader legislative and administrative powers as compared to other regions of the same state – where existing –, special financial arrangements and ad hoc procedures to regulate the relations with the state and other subjects. While financial arrangements will be dealt with in the next section (V), this part analyses the main competence areas normally devolved to or exercised by special status authorities, their legal guarantees and the procedural framework for their exercise. Particular attention is devoted to international relations and inter-regional cooperation as key areas of interest for special status regions (IV.c).

Entrenchment of the competence matters

52. As mentioned above (part II.c), special status requires constitutional coverage, at least in the material sense, and is

further specified in other acts, constitutional or legislative in nature. These include constitutional laws, regional constitutions, statutes of autonomy, and entrenched laws of the state parliament, often adopted with formal consent of the involved territory, expressed by the elected assembly and/or by referendum. All these various forms of entrenchment, including, where existing, international anchoring of special autonomy, serve the purpose to impede that essential elements of the special autonomy be changed by unilateral decision of an occasional majority in the state parliament.

53. It is generally contended that the essential elements of the special status cannot be changed, for sure not without the consent of the affected authorities. Such elements include, in particular, the very existence of the concerned authority, its special position within the constitutional framework of the state and the very purpose why the special regime has been established. Conversely, the division of competences requires some degree of flexibility. The procedure to amend the competence fields and the limits for the exercise of the competences varies based on the source of law in which they are enshrined.

Political autonomy

54. Within the framework of the state constitution and of the other sources of law regulating the special status autonomy, including the procedures in place for cooperation and supervision, the special status authorities are free to determine their own policy in the competence fields they are responsible for. This means that they normally enjoy full discretion to exercise their initiative with regard to the matters that are not excluded from their competence, with a view to adapting them to the specific needs of the territory. It thus implies that the definition of the specific needs of the territory and of its population is determined in first place by the regional authorities concerned and that such authorities shall be vested with decision-making and implementation powers in the areas covered by their own competences.

55. Special status regions usually have legislative powers in the areas of their competence as the most genuine expression of their political autonomy. However, even when special status regions do not enjoy the power to adopt formal laws (as in the case of the *collectivité territoriale* of Corsica, the Azores and Madeira, or Wales until 2006), it is essential that they can adopt binding legal acts of a general nature that in fact can express the decision-making power and the political autonomy of the special status authorities.

Division of competences

56. Competence matters of special status regions are normally listed in a detailed way by the foundational acts of the autonomy. In most recent arrangements, such as the new autonomy statutes of Catalonia and Vojvodina, a great degree of detail is used to determine and define the competences. Conversely, when competences are not sufficiently specified as to what authority has what power in what policy area, controversies are likely to happen and difficult to solve, as noted by many with regard, for instance, to the difficult implementation of the autonomy of Gagauzia.

57. At the same time, however, it must be noted that a clear identification and division of competences is per se not enough to prevent controversies. First, the lists of competences often overlap between the state constitution and the basic laws of the special status arrangements, and this can cause disagreements between the state and the special status governments, as the specific content of individual competences can be interpreted differently. Secondly, competences are in many cases not exclusive, but rather shared by the different layers of government. Third, competence matters such as those in the field of environmental protection, economic territorial development, infrastructure, energy and others, are often transversal, whereby the prevailing interest – whether state-wide or local – cannot be defined a priori. Therefore, to attribute a competence to one level does not per se resolve the question of what authority is responsible for what action, simply because, in a multilevel system, most fields are subject to regulations issued by different authorities.

58. Thus, to avoid competence conflicts, it is essential that the procedures for cooperation and consultation (see III.c) and the legal guarantees (see III.d) are equally developed as the techniques for dividing the responsibilities in detail. In this regard the Government of Wales Act 2006 is to be mentioned, which divides (schedule 5) between “fields” (broad subject areas) and “measures” (specific policy areas within a field) and provides a mechanism for the Welsh Assembly to gain further legislative competences.

b. Core areas of competence

59. A comparative analysis of the main competence areas for which special status regions are responsible shows that such authorities are vested in first place with the powers to regulate the essential elements that have led to the establishment of the special status regime. These can be divided in two broad areas. The first is the protection of the specific cultural, linguistic and ethno-national characteristics of the population living in the autonomous territory. The second is the regulation of the specific socio-economic and infrastructural needs of the territory. As these two reasons concur in determining the establishment of most of the special status regimes (see above, 14), also the respective competences are frequently combined.

60. The culture-related competences include in particular promotion of regional culture, defending and enhancing the region's cultural heritage, the regulation of the use of language(s), school, education and training, symbols, museums, libraries, theatres and other cultural institutions, sport, local media.

61. The territory-related competence include, inter alia, urban and territorial planning, protection of the environment, forestry, construction, trade, hunting and fishing, transportation, roads, water and energy supply, health care, social security and social welfare, local labour market, economic development, use of natural resources, juvenile policies, foreign relations as provided (see below, IV.c). The effective control over the environment and the use of natural resources is of particular importance in those special status regions that are especially rich in terms of bio-diversity and/or whose culture is especially linked to the land, as in the case of – but not limited to – indigenous peoples.

62. A third set of competences common to the special status regions are those necessary to the functioning of the

administration and to the preservation of an own political system. These include, in particular, electoral law, organization of the own administration, in most cases organisation of the own civil service and regulation, supervision and (co) funding of the municipalities.

63. With regard to competences in the field of jurisdiction and law enforcement, the situation varies considerably from case to case. While local police is often included in the regional competences as part of the power to regulate municipalities, the establishment of an own regional police very much depends on the history of the special arrangement, on whether there has been a violent conflict, on the negotiations with the state, and other factors. Ultimately, no general trend is to be noticed in this regard. For example, regional police exists both where there has been no violent conflict (Catalonia), and where severe violent occurrences happened (Northern Ireland, Basque Country). Conversely, regional police does not exist in special regions that experienced very limited violence (Autonomous Province of Bolzano-South Tyrol) or semi-autonomous police exist where no violence occurred (Åland Islands).

64. Similarly, the existence of an autonomous judicial system depends on the legal tradition of the country as well as on historical factors. In most cases the judicial system is the same for the whole state, although exceptions exist, like in the United Kingdom, where England and Wales have one judicial system, Scotland a different one and Northern Ireland a third one. Within a unified judicial system, specific rules are sometimes in place with regard to the use of local/minority languages and, as a consequence, to the requirements for being assigned or even hired as a judge, a prosecutor or an employee of the court. In the Autonomous Province of Bolzano-South Tyrol, for example, while the judicial system is the same as in the rest of Italy, a separate selection for magistrates and court employees takes place, all have to be bilingual and the posts are assigned according to the quota system by language groups as for other branches of public administration. In the Basque country it is established that the state and the autonomous community cooperate in the appointment of judges and civil service of the judiciary in the autonomous community.

c. External relations

65. In most cases, special status regions have specific competences with regard to external relations, including treaty-making power, a limited international subjectivity, inter-regional cross-border cooperation and, where applicable, special relations with the European Union. While foreign policy is normally a state competence, the importance of establishing some external relations for many special status regions depends on factors such as history, the existence of a "kin-state" of the majority population in the territory, geographical position and the magnitude of the self-government enjoyed by the special status region.

66. As a minimum standard, special status regions have the right to be consulted by the state government and often to be included in the state delegation when treaties are negotiated that are of direct concern to them, as provided, inter alia, by the statutes of autonomy of Sardinia and of the Canary Islands. This includes, in particular, the right to be effectively consulted, or to be represented through bodies established for this purpose, in the activities of the European institutions.

67. More frequently, special status authorities are also allowed to directly negotiate with foreign countries and foreign sub-national authorities, with (Faroes, Greenland) or without (Azores, Madeira) the presence of the state's foreign ministry, normally in limited areas that directly affect them. Some special status regions, including the Faroe and the Åland Islands, as well as Greenland, are part of international organisations that do not necessarily require their members to be states, such as the Nordic Council. Some others, such as Catalonia, have signed cooperation agreement with a number of multilateral organisations.

68. In some cases, special status regions have their own treaty-making power, although the international liability ultimately rests with the state. This gives the state extensive powers to control that treaties concluded by the special status authorities do not conflict with the foreign policy of the state. In this regard, it is important to establish mechanisms to prevent disputes, like in the case of Denmark, where a special adviser for Faroese issues is based in the foreign ministry with the task to bring interests together. In case of disagreement on the competences, a joint committee is in charge to solve the issue.

69. Since special rules with regard to the right to establishment, to buy property, to fish and to use natural resources are provided in a number of special status regions, these often enjoy special status also with regard to the relations with the European Union. For example, the Faroe Islands have never been part of the EU, Greenland has withdrawn from it in 1985, following a referendum, and the Åland Islands are exempted from some EU policies based on a protocol negotiated by Finland at the time of its EU-accession. Specific limitations to the application of EU law are provided in a number of other special status territories, including as the Channel Islands, the Isle of Man, Gibraltar, Ceuta and Melilla, French overseas territories and departments.

70. Given the particular history and conditions of some special status regions, some of them also have additional special agreements that impact on their external relations. For instance, the Åland Islands are since long time a de-militarized territory, and Greenland is (at least according to a resolution adopted in 1983) a nuclear-free territory.

71. Furthermore, all special status regions have the right to form associations and to undertake activities of inter-regional or cross-border cooperation in matters within their competences. This often includes the establishment of preferential links with the "kin-state" of the majority population in the autonomous territory.

72. In exceptional cases, also the right to external self-determination is contemplated. Greenland has started in 2009 a negotiated process that could lead to full independence. The same goes for French Polynesia, which based on the so called "Matignon agreement" is entitled to hold a referendum on independence from France as of 2014. Similarly, the law on special status of Gagauzia stipulates that in case of change of status of the Republic of Moldova as an independent state, the Gagauz people will be granted the right to external self-determination.

V. Financial arrangements and related issues

73. It is a fundamental principle of local and regional democracy that local and regional authorities shall have at their disposal foreseeable resources commensurate with their competences and responsibilities allowing them to implement these competences effectively (art. 6 and 9 ECLSG and Helsinki principles, B11.1-4).

74. Special status regions enjoy more competences as compared to other territories of the same state and are established with the aim to provide viable solutions to complex issues of governance of territorial and cultural diversities. For this reason, a special financial regime is a necessary precondition for special status authorities to exist as such.

75. At the same time, a special and more favourable financial regime, while indispensable to finance more competences, also raises questions of solidarity and proportionality. Being part of a state normally implies the obligation to participate in forms of equalisation between economically stronger and economically weaker territories. The degree to which special status regions participate in such system varies from case to case based on a number of factors that are essentially political in nature. Furthermore, to benefit from an overall more favourable financial regime also impacts on the principle of equality among citizens of the same state and even on the potential enjoyment of fundamental human rights. This requires, however, that different situations be treated differently.

76. In other words, there is no universal formula to reach the balance between special financial arrangement and the principles of solidarity, territorial cohesion and proportionality. A comparative analysis, however, reveals a general trend, regarding both the financial aspects and the institutional principles supporting them.

a. Financial principles

Own resources and spending power

77. In the implementation of their own competences, special status regions normally rely on resources of their own at which they are able to dispose freely. These resources include for the most part fixed shares of state taxes. Very few special status regions have the full tax raising authority in their respective territory. This is the case, for instance, in the Basque country, where the autonomous community (rather: each one of its three provinces) levies all taxes on the territory and transfers a share thereof to the state. In any event, the tax system is always determined and coordinated by the state.

78. Other own resources include own regional taxes, additional regional rate on state taxes that special status authorities may determine within a given range, other revenues decided by regional authorities, variable shares of state taxes, non-earmarked funding from the state or borrowings for capital investment collected from the capital market. Especially the amount of own regional taxes and the possibility to vary the rate on state taxes varies considerably. Scotland, for example, has the right to increase or decrease by no more than 3% the rate on income tax.

79. Furthermore, special status regions often receive lump sums from the state as repayment of part of the taxes levied by the state in the autonomous territory or as compensation for state activities that are carried out by the special status authorities. For example, in the Åland Islands the Finnish state levies all taxes and custom duties and pays back to the islands a lump sum of 0.45% of the state budget. An additional transfer is granted if the taxes levied on the islands make up more than 0.5% of the annual tax income of the state. The statute of the Autonomous Province of Vojvodina provides that the budget of the autonomous province shall amount to at least 7% of the budget of the Republic of Serbia.

80. The principle of political autonomy implies that special status authorities as a rule have spending autonomy. This means, in principle, that they are free to determine where to invest their own resources and thus enjoy policy discretion in the implementation of their competences.

81. Additional transfers are often provided by the state in order to carry out specific duties, such as infrastructural works. In such case, the money cannot be considered to be part of the special status regions' own resources and funds are normally earmarked by the state for a specific task.

Financial equalisation

82. Financial equalisation procedures are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support, with a view to protecting economically weaker territories. Special status regions often benefit of equalisation measures to compensate their additional administrative costs or particular geographic conditions.

83. In most cases, special status regions either benefit from equalisation measures or they are de facto exempted from the state-wide financial equalisation mechanism. This is the case when such regions receive from the state budget what has been overall raised in the respective territory, except, in general, the costs for the state administration or the state activities carried out on the territory. In some case, however – like, to different degrees, some Italian special status regions, or Catalonia – they contribute to the state-wide equalisation mechanism. A way to contribute to such mechanisms is also the negotiated transfer of additional competences to a special status region which accepts to cover the related costs from its own budget, as has recently been the case, for example, for the Autonomous Provinces of Bolzano-South Tyrol and Trento in Italy.

84. In all cases, it is essential that solidarity mechanisms are governed by predetermined rules based on objective criteria. In particular, it should be avoided that the state uses its overall power to coordinate public finances and to respect domestic and international obligations as regards public deficits by unilaterally restrict the financial autonomy of special status regions, as was recently the case in Italy and Spain due to the financial constraints. The lack of clear and commonly agreed rules may lead to an increased judicial litigation and even political confrontation, as was the case in Gagauzia especially before 2001, where the autonomous region and the state government had opposite views as to the interpretation of the financial provisions of the law on special status.

b. Institutional principles

85. Whatever the tax and fiscal regime of each special status region, coordination is required among the levels of government in this field. Such coordination requires both a cooperative attitude by the actors involved and the existence of adequate institutional and procedural mechanisms to prevent and compose potential conflicts. As many examples have demonstrated, especially in the Eastern part of Europe, political agreements not supported by institutional mechanisms are not sufficient to create the necessary conditions for effective coordination, especially in financial issues.

86. Institutional and procedural mechanisms first require the existence of clear and pre-determined rules on how the financial relations are to be regulated. This includes, in particular, detailed provisions on how the fixed and the variable shares of state taxes transferred to the special status regions are to be calculated, the degree of own financial autonomy of the autonomous territories and the rules on the possible regional discretion on the rate on state taxes. Experience shows that such rules only prove to work when they are negotiated and permanently revised in accordance by the parties.

87. Secondly, mechanisms need to be in place for prevention and composition of conflicts as regards financial relations. Given the complexity of the subject and its particular delicacy, special mechanisms are often provided in this field on top of the ordinary cooperation mechanisms established between the states and the special status regions. For example, permanent mixed commissions exist on finance and tax issues between the Spanish state and the Basque country and between Finland and the Åland Islands.

88. Third, it is essential that if the cooperation mechanisms are not successful, independent judicial remedies exist to adjudicate disputes over financial resources (see above, III.d).

89. Fourth, institutional and procedural mechanisms need to combine legal clarity and entrenchment of the rules with some degree of flexibility to adapt them rapidly to changing circumstances. This could be achieved by establishing that financial parts of the special status statutes or laws can be modified according to a simplified procedure, requiring the consent of both the state and the special status authorities, as is the case, for example, in the Autonomous Provinces of Trento and Bolzano-South Tyrol. In very particular circumstances conventional rules on financial relations may operate, such as the so called "Barnett formula" which regulates the financial transfers in the United Kingdom.

VI. Conclusions

90. Granting special status to specific territories is a means to address particular issues pertaining to those territories without challenging the overall state structure. Special status provides a significant degree of institutional flexibility to cater to the very specific situational characteristic without embracing, in particular, federalization of the whole country. It is not by chance that special status regions are to be found, as a rule, only in non-federal – or at least not fully-fledged federal – countries.

91. While sometimes even based on international commitments, special status is essentially a constitutional instrument. Special status must be anchored in the state constitution and its specific rules shall be entrenched in legal acts that prevail over ordinary legislation.

92. The essence of special status consists in its entrenchment in legal acts that cannot be unilaterally amended by the state legislature, at least not by ordinary majority. The foundational principles of special status regimes can, in principle, only be modified by mutual agreement of the state and the special status authorities.

93. Special status implies more numerous and stronger guaranteed powers (legislative, administrative and financial), privileged forms of representation as well as bilateral mechanisms for cooperation with the state.

94. The principles of regional democracy are more firmly guaranteed in special status regions. Such principles include: political autonomy exercised by a freely elected assembly and by other forms of citizens' participation in decision-making; protection against unilateral change of boundaries; the guarantee that supervision of acts is carried out only according to procedures and in cases provided by the constitution and that the state power of temporary substitution to act in lieu of regional authority organs is exercised only in exceptional cases strictly prescribed by the law; the right of special status regions to be effectively consulted in due time before the adoption of acts of direct interest to them, and to be given sufficient time to make their voice heard; effective legal remedies against violations of their rights and prerogatives.

95. The competences of each special status region vary as each case is aimed at solving specific issues regarding one particular territory. However, core competences are common to all special status regions: these concern, in particular, the subject matters related with, respectively, the safeguard of the cultural specificities of the population and the governance of territories that often have particular characteristics as compared to the rest of the country.

96. Despite the fact that competences of special status regions are entrenched and may be clearly defined, coordination and cooperation mechanisms are essential in order to reduce conflicts with the state as to the scope of individual competence areas.

97. Due to their geographic position and cultural characteristics, special status regions are normally interested in actively engaging in cooperation with international organizations, foreign countries or regions belonging to those states. To do so, they normally enjoy significant powers in this regard. For external relations to be effective and not to contradict the foreign policy of the state, it is essential that cooperation mechanisms are also in place in this area.

98. Special status regions enjoy wider financial autonomy as compared to other territories of the same state. Not only this is necessary because such territories have more competences and thus carry out more tasks; the reason for special financial treatment is often also the compensation for the particular territorial or cultural situation of the affected territories.

99. Special financial arrangements require constitutional entrenchment as they impact on the principle of equality among

citizens. In order to avoid conflicts, it is essential that special financial regimes are negotiated, detailed and flexible, and that effective remedies against violations are provided.

100. Most of the mentioned elements are common to all European special status regions. The existence and effective implementation of such elements can be considered the main factor for success of special status regimes throughout the continent. Conversely, comparative practice shows that the less these principles are in place and/or effectively implemented, the more likely it is that special status regimes will fail. Such regimes require careful balances between different constitutional principles, the ability to constantly adapt and the right balance between rigidity and flexibility.

¹ L: Chamber of Local Authorities / R: Chamber of Regions

EPP/CCE: European People's Party Group in the Congress

SOC: Socialist Group

ILDG: Independent Liberal and Democratic Group

ECR: European Conservatives and Reformists Group

NR: Not registered

² Debated and approved by the Chamber of Regions on 30 October 2013 and adopted by the Congress on 31 October 2013, 3rd sitting (see document [CPR\(25\)2PROV](#) explanatory memorandum), rapporteur : Bruno Marziano, Italy(R, SOC).

³ See explanatory memorandum to this resolution

⁴ See footnote 2

⁵ This explanatory memorandum was prepared by Francesco Palermo, member of the Group of Independent Experts on the European Charter of Local Self-Government.

⁶ Opinion on the state of devolution in the EU and the place for local and regional self-government in EU policy making, the Committee of the Regions, adopted on 12 April 2013.

⁷ A partial exception is the Russian Republic of Tatarstan: despite formally enjoying the same constitutional status of other republics within the Russian Federation, the legal status of Tatarstan is also governed by the Treaty "On Delimitation of Jurisdictional Subjects and Mutual Delegation of Authority between the State Bodies of the Russian Federation and the State Bodies of the Republic of Tatarstan" and by the "Agreement between the Government of the Russian Federation and the Government of the Republic of Tatarstan On Delimitation of Authority in the Sphere of Foreign Economic Relations", both adopted in 1994.

⁸ Not even the identification of a "frozen conflict" is uncontroversial. In some case there is no international recognition of independence (such as in the case of Transnistria or Nagorno-Karabakh), in some other case but a few (like for Abkhazia and South Ossetia). The case of Kosovo is even more complex, as it is recognized as an independent country by many states (more than half of the UN member states and the majority of EU and Council of Europe members) but is also considered a special status province by the Republic of Serbia. For the Council of Europe, all reference to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

⁹ In some case, these are semi-independent, former colonial territories, often referred to as Dependent Territories, like for example the British dependent territories such as Anguilla, Bermuda, Caiman Islands, Montserrat islands, Caicos, Islands, Turks Islands. These cases do not qualify as special status regions for the purpose of this Report.

¹⁰ Not all exclaves are per se to be considered special status regions, but only those that enjoy special legal status. For example, the Russian exclave of Kaliningrad is not included in this report as it has the status of a «normal» oblast.

¹¹ It is worth noting that the Italian constitutional court established that the constitutional procedure established for allowing individual municipalities to be attached to a different region (requiring a successful referendum and a law of the parliament after consulting the regional assemblies involved) in practice does not apply to special regions as their territories are identified by special statutes with constitutional rank. Therefore, only the amendment of the autonomy statute by means of a constitutional law would allow changing the borders of special regions (judgment no. 66/2007).

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