

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

Recommendation 126 (2003)¹ on local and regional democracy in Azerbaijan

The Congress,

1. Recalling:

a. Article 2, paragraph 3, of the Committee of Ministers' Statutory Resolution (2000) 1 on the CLRAE, which entrusts it with the preparation of country-by-country reports on the situation of local and regional democracy in all member states (monitoring reports);

b. CLRAE Resolutions 31 (1996), 58 (1997) and 106 (2000) establishing guiding principles for the preparation of the above-mentioned reports;

2. Bearing in mind:

a. the report drawn up by its Bureau on the occasion of the accession of Azerbaijan to the Council of Europe² and the letter sent by the President of the Congress to the Minister of Justice of the Republic of Azerbaijan on 2 October 2002;

b. Resolution 1305 (2002)³ of the Parliamentary Assembly on the honouring of obligations and commitments by Azerbaijan, drawn up as part of its own monitoring procedure, which explicitly refers to the CLRAE's conclusions regarding the situation of local democracy in the country;

c. the Committee of Ministers' recommendations to the Azerbaijani authorities, prepared through the intermediary of Monitoring Group GT-SUIVI.AGO, which also explicitly refer to the CLRAE's recommendations regarding the situation of local democracy in the country;

3. Having examined the Institutional Committee's report on the situation of local and regional democracy in Azerbaijan, prepared by Mr A. Lloyd (United Kingdom, L) and Mr G. Grzelak (Poland, R), rapporteurs, together with Mr J.-C. Frecon (France, L), co-rapporteur;

4. Thanking:

a. the representatives of the Parliament of the Republic of Azerbaijan (*Milli Mejlis*), particularly the parliamentary committee for local affairs, and the mayors and municipal councillors interviewed by the rapporteurs during both their official visits to the country (Baku, 25 to 28 August 2002, and Baku and Sungait, 6 to 8 March 2003), for their openness to dialogue and for the extensive information they supplied;

b. the Ministry of Justice of the Republic of Azerbaijan, particularly the centre responsible for providing

methodological assistance to municipalities, for its logistical support and for the detailed observations which it communicated during the above-mentioned visits;

c. the Administration of the President of the Republic of Azerbaijan for its support throughout the monitoring report preparation procedure, albeit regretting that during the second official visit the appointment with the head of the President's administration was cancelled at the last minute;

d. Mr A. Delcamp (France), Chair of the Group of Independent Experts on the European Charter of Local Self-Government, and the secretariat of the Institutional Committee, for their valuable help to the rapporteurs in carrying out their assignment;

5. Welcoming the ratification by the Republic of Azerbaijan of the European Charter of Local Self-Government (hereafter: the Charter);⁴

6. Regretting, nevertheless, that the Republic of Azerbaijan:

a. does not consider itself bound by Article 7, paragraph 2, Article 9, paragraph 5 and Article 10, paragraph 3 of the European Charter of Local Self-Government;

b. has not yet signed or ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and its additional protocols, and the Convention on the Participation of Foreigners in Public Life at Local Level;

c. has not yet ratified the European Charter for Regional or Minority Languages;

7. Encourages the competent authorities to accept the paragraphs of the European Charter of Local Self-Government mentioned in paragraph 6.a and the conventions mentioned in paragraphs 6.b and c above;

8. In view of the foregoing, wishes to draw the attention of the presidential, parliamentary and governmental authorities of the Republic of Azerbaijan to the following considerations and recommendations:

8.1. General considerations and recommendations:

a. after some initial delay, a considerable legislative effort has been launched in the area of local self-government. However, this effort should be refined in such a way as to bring legislative provisions fully into line with the constitution and the European Charter of Local Self-Government;

b. once the legislative framework has been clarified, it is vital to ensure rigorous implementation of this legal arsenal;

c. these achievements should enable Azerbaijan gradually, in view of the difficulties of its specific situation, to honour all the commitments entered into under the European Charter of Local Self-Government, and subsequently to respond to the proposals set out in the draft European charter of regional self-government;

8.2. Specific considerations and recommendations:

a. legal definition of municipalities (Articles 2 and 3 of the European Charter of Local Self-Government);

i. while it refers to direct election by the people and draws a distinction between municipalities and non-governmental organisations (NGOs), the Law of the Republic of Azerbaijan on the Status of Municipalities (28 July 1999) defines municipalities as the expression of a “non-governmental system” (Article 14.4);

ii. according to the information obtained, these expressions are used to differentiate between municipalities and central authorities. Nevertheless, these provisions should not be interpreted as meaning that the municipalities are not part of the public administration system of the country;

iii. in order to prevent such misunderstanding – particularly in connection with the fundamental principles underpinning the main provisions of the European Charter of Local Self-Government – it is desirable for the law in question to specify that, while municipalities are undeniably independent, they are none the less public authorities belonging to the country’s system of public administration, like all other authorities directly elected by the people (the President of the Republic and the *Milli Mejlis*);

iv. in view of the foregoing, the Congress recommends that the competent authorities of the Republic of Azerbaijan take the necessary steps to ensure that:

– the expression “non-governmental system” used in Article 1.1 of the Law on the Status of Municipalities to define local self-government is deleted;

– the definition of “municipality” set out in Article 2.1 of the Law on the Status of Municipalities explicitly mentions that “municipalities are public authorities of the Republic of Azerbaijan as an independent element of the public administration system”;

b. powers and responsibilities of municipalities (Articles 3 and 4 of the European Charter of Local Self-Government);

i. the powers and responsibilities of Azerbaijan’s municipalities are very limited, failing to account for any substantial share of public affairs⁵ as stipulated in the European Charter of Local Self-Government;⁶

ii. moreover, these powers are neither full nor exclusive.⁷ In fact, all municipal duties are discharged merely as back-up to, or under the supervision of, the devolved authorities;

iii. in this connection it should be remembered that public responsibilities should generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy (principle of subsidiarity);⁸

iv. in view of the foregoing, the Congress recommends that the competent authorities of the Republic of Azerbaijan:

– ensure practical implementation of the provision of the Charter, stipulating that responsibilities allocated to municipalities must account for a substantial share of public affairs;

– amend the Law on the Status of Municipalities as soon as possible in order to include the principle of subsidiarity, as mentioned in Article 4.3 of the Charter;

– specify, in the same law, that the responsibilities and powers entrusted to municipalities must be full and exclusive and that the municipalities should have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority;⁹

c. relations between central authorities at local level¹⁰ and municipalities (Articles 4 and 8 of the European Charter of Local Self-Government);

i. the shortcomings described in paragraph 8.2.b above and the absence of legislation defining relations between devolved state authorities and municipalities often lead, in practice, to violations of local self-government;

ii. the Congress recommends that the competent authorities of the Republic of Azerbaijan adopt a law as soon as possible which lays down clear rules on relations between the devolved state authorities and the municipalities, particularly where devolved state authorities are in competition with municipalities or operate in fields in which there is no clear apportionment of responsibilities;

d. status of local elected representatives and supervision of the lawfulness of their decisions (Articles 7 and 8 of the European Charter of Local Self-Government);

i. the draft law on administrative supervision of the action of municipalities, drawn up in the *Milli Mejlis*, has been evaluated on several occasions by the Directorate of Co-operation for Local and Regional Democracy of the Secretariat General of the Council of Europe. The latest version of this opinion¹¹ clearly shows that the draft law in question does not comply with the European Charter of Local Self-Government¹² because:

– it is extremely vague about which body will be responsible for conducting administrative supervision, and about the status of such a body;

– it fails to define clearly the scope of the administrative supervision in question;

– it does not describe the supervisory procedures in sufficient detail;

ii. in view of these observations, the Congress recommends that the competent authorities of the Republic of Azerbaijan:

– refrain from adopting the draft law on administrative supervision of the action of municipalities until it has been revised on the basis of the above-mentioned opinion;

– rapidly adopt a law on the status of local elected representatives in order to guarantee the free exercise of their mandates;¹³

e. financial resources of municipalities (Article 9 of the European Charter of Local Self-Government):

i. the financial independence and tax-raising capacity of municipalities in Azerbaijan are very limited; the only revenue available to most municipalities comes from non-lucrative local taxes and charges;

ii. this problem is aggravated by the fact that municipalities, particularly in Baku, still do not have their own assets, and that taxes on the more lucrative assets or activities remain under the control of the central authorities;

iii. in practice, despite the corresponding decisions by the President of the Republic, transfer of property from the devolved authorities to the municipalities has not yet been completed;

iv. furthermore, the municipalities are apparently unable to dispose freely of their resources in order to exercise their powers;

v. state funds are not distributed on the basis of objective, clear, transparent and specific criteria established by law;

vi. in view of the foregoing, the Congress recommends that the competent authorities of the Republic of Azerbaijan:

– gradually increase the tax-raising capacity of the municipalities so that, *de facto*, at least a substantial proportion of their financial resources can derive from local taxes and charges of which they have the power to determine the rate, within the limits of statute.¹⁴ To that end it is important to ensure that such taxes and charges are sufficiently lucrative, buoyant and diversified;¹⁵

– complete the transfer of property to the municipalities in accordance with statute and the decrees of the President of the Republic;¹⁶

– adopt as soon as possible rules guaranteeing balanced apportionment of state transfers to the municipalities, based on clear, easily verifiable, objective and specific criteria;

– ensure that, in the framework of their powers, the municipalities can freely dispose of their resources, including those which derive from subsidies granted by the central authorities;¹⁷

f. local democracy in the capital, Baku:

i. the city of Baku is governed by a governor and his deputies (covering eleven different districts), all of whom are representatives of the state executive at the peripheral level;

ii. while acknowledging that a capital city does sometimes discharge duties which transcend local interests for reasons of economy and efficiency, such interests should be managed by a democratically elected council acting at overall city level;

iii. this principle is quite compatible with the existence of smaller urban municipalities complementing the municipality representing the overall city;

iv. in view of the foregoing, the Congress recommends that the competent authorities of the Republic of Azerbaijan adopt a law relating to the capital city as soon as possible. This law should provide for setting up a local public administration acting at overall city level run by a council directly elected by the citizens;

g. municipalities' right to co-operate and associate (Article 10 of the European Charter of Local Self-Government):

i. it is regrettable that the country still has no association to represent all municipalities nationwide. Setting up such an association, which should not be confused with co-ordinating centres or councils (inter-municipality co-operation bodies set up in order to improve implementation of specific powers and responsibilities), would enable municipalities to:

– better defend their interests vis-à-vis the central authorities when the latter debate issues of direct concern to the municipalities, which would require the competent central authorities to formally and regularly consult the association of municipalities;

– improve co-operation with local authorities in other states, possibly through the intermediary of an international association of local authorities;

ii. in view of the foregoing, the Congress recommends that the competent authorities of the Republic of Azerbaijan:

– do their utmost to ensure the final establishment of a political association of municipalities (or even two such associations, if they wish to deal with the situation of the capital separately) at national level;

– subsequently, sign and ratify the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and the additional protocols thereto and, as of now, encourage co-operation between the local authorities of the countries of the region;

h. regional affairs:

i. the Constitution of Azerbaijan does not refer to regional organisation of the country. However, it does have a separate section on the autonomous republic of Nakhitchevan. Although this republic has its own parliament (*Ali Mejlis*) and regional government, it would appear to remain highly dependent on the central authority. Furthermore, the republic's budget is very largely dependent on that of the central state;

ii. appraisal of the situation of (or potential for) regional democracy in Azerbaijan must also take account of a further series of factors:

– the division of the country into eighty-six state districts directed by devolved authorities whose officials are reluctant to give up the extensive powers and prerogatives which they enjoy;

– the institutional situation of Baku which, as mentioned above, has no form of self-government, despite its size and population;

– the difficulties encountered in stepping up co-operation among municipalities and in setting up an association representing their interests in dealings with the central authorities;

– the persistence of the conflict of Nagorno-Karabakh;¹⁸

iii. this situation is obviously unlikely to encourage the Azerbaijani authorities to consider implementing a regionalisation process which would only undermine the country's unity;

iv. however, the Congress recommends that the competent authorities of the Republic of Azerbaijan undertake to find solutions to each of the problems mentioned in sub-paragraph ii above, so that the debate on possible regionalisation of the country can begin;

i. training of local elected representatives:

i. the Ministry of Justice, particularly the centre for methodological assistance to municipalities, is to be congratulated for its efforts and achievements in this field;

ii. however, in view of the situation in the country, the lack of any real understanding of local democracy among the population and the training needs of local elected representatives and staff in the day-to-day exercise of their responsibilities, the Congress would urge the Ministry of Justice to continue its efforts in co-operation with the Directorate of Co-operation for Local and Regional Democracy of the General Secretariat of the Council of Europe;

9. In view of the foregoing, the Congress notes with regret that most of the requests set out in the report drawn up on Azerbaijan's accession to the Council of Europe and in the letter from the President of the Congress (see paragraph 2.a above) have not been met despite the promises and that they must now be reiterated in this text in the form of an official recommendation;

10. It therefore invites:

a. the presidential, parliamentary and governmental authorities of the Republic of Azerbaijan to comply fully, without delay, with this recommendation and to keep the competent authorities of the Council of Europe¹⁹ abreast of any progress made in this respect, particularly, and as a matter of urgency, on the matters mentioned in paragraph 8.2.a above;

b. the Committee of Ministers:

i. to transmit the present recommendation and its explanatory memorandum to the governmental authorities of the Republic of Azerbaijan;

ii. to refer the above recommendations to Monitoring Group GT-SUIVI.AGO so that it can take account of them when monitoring Azerbaijan's commitments and undertakings;

c. the Parliamentary Assembly to take account of the above recommendations in its procedure for monitoring Azerbaijan's commitments and undertakings;

d. the Minister responsible for issues of local and regional self-government in the country to attend the CLRAE's autumn Institutional Session (Strasbourg, 25 November 2003) in order to outline the measures taken and/or envisaged with a view to implementing the present recommendation. In this context, it takes note of the letter of 8 May 2003 from the Minister to the President of the Congress – as it appears in the addendum to the explanatory memorandum to this recommendation – which states, *inter alia*, that the relevant bodies, including the Parliament and Government of Azerbaijan are taking the recommendations of the Congress fully into account.

1. Debated and adopted by the Congress on 21 May 2003, 2nd Sitting (see Document CG (10) 4, draft recommendation presented by Mr A. Lloyd, Mr. G. Grzelak and Mr J.-C. Frecon, rapporteurs).
2. Document CG/Bur (6) 172 of 24 May 2000, Rapporteurs Mr A. Lloyd (United Kingdom, L) and Mr G. Milcamps (Belgium, L).
3. Text adopted on 26 September 2002 at the 31st Sitting of the Parliamentary Assembly, on the basis of Document 9545 prepared by the Monitoring Committee, rapporteurs Mr A. Gross (Switzerland) and Mr G. Martínez Casañ (Spain).
4. The Congress notes that the Republic of Azerbaijan declared that it would be unable to guarantee the implementation of the provisions of the Charter in the territories occupied by the Republic of Armenia until these territories had been freed from such occupation.
5. Relating to state administration.
6. Article 3.1 of the Charter.
7. Article 4.4 of the Charter.
8. Article 4.3 of the Charter.
9. Article 4.2 of the Charter.
10. Devolved authorities.
11. Document on the draft law adopted by parliament at second reading and transmitted to the Ministry of Justice of Azerbaijan by the Director of Co-operation for Local and Regional Democracy on 5 March 2003.
12. Article 8 of the Charter.
13. Article 7.1 of the Charter.
14. Article 9.3 of the Charter.
15. Article 9.4 of the Charter.
16. Article 9.1 of the Charter.
17. Article 9.7 of the Charter.
18. See paragraph 6 of Resolution 151 (2003) of the CLRAE.
19. Secretariat of the Congress of Local and Regional Authorities of Europe and Directorate of Co-operation for Local and Regional Democracy – General Secretariat.