

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 326 (2012)¹ Local and regional democracy in Azerbaijan

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1*b*, of Statutory Resolution CM/Res(2011)2 of the Committee of Ministers relating to the Congress of Local and Regional Authorities of the Council of Europe, which stipulates that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of the above-mentioned Statutory Resolution CM/Res(2011)2, which stipulates that: “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. its Resolution 307 (2010) (revised) on procedures for monitoring the obligations and commitments entered into by the Council of Europe member states in respect of their ratification of the European Charter of Local Self-Government (ETS No. 122);

d. its Recommendation 219 (2007) on the status of capital cities, Recommendation 132 (2003) on municipal property in the light of the principles of the European Charter of Local Self-Government and Resolution 299 (2010) on follow-up by the Congress of the Council of Europe Conference of Ministers responsible for Local and Regional Government (Utrecht, Netherlands, 16-17 November 2009);

e. its Previous texts on local and regional democracy in Azerbaijan – Recommendation 126 (2003) and Resolution 151 (2003).

2. The Congress underlines that:

a. Azerbaijan became a member of the Council of Europe on 25 January 2001. It signed the European Charter of Local Self-Government on 21 December 2001 and ratified it on 15 April 2002. The charter entered into force in respect of Azerbaijan on 1 August 2002;

b. Azerbaijan declared itself not to be bound by Articles 4.3, 7.2, 9.5, 9.6 and 10.3 of the European Charter of Local Self-Government and formulated a declaration which reads as follows: “The Republic of Azerbaijan declares that it is unable to guarantee the application of the provisions of the Charter in the territories occupied by the Republic of Armenia until these territories are liberated from that occupation”;

c. Azerbaijan has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) nor Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (CETS No. 206);

d. the Congress Monitoring Committee appointed Mr J. Wienen and Mrs G. Mosler-Törnström as rapporteurs and instructed them to prepare and submit to the Congress a report on local and regional democracy in Azerbaijan;

e. the Congress would like to thank the Permanent Representation of Azerbaijan to the Council of Europe, the Azerbaijani authorities at central, regional and local level, the representatives of Azerbaijani non-governmental organisations (NGOs) specialised in local administration and all their other interlocutors for their valuable co-operation during the different stages of the monitoring procedure and for the information provided to the delegation, which ensured the smooth conduct of the visit.

3. The Congress notes with satisfaction:

a. the creation in 2006 of three national associations of municipalities (villages, towns and cities) to represent municipal interests at national level;

b. the signature of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106);

c. the signature on 10 February 2010 of the decree by the President of Azerbaijan authorising the application of the law of the Azerbaijan Republic on “State registry and provision of municipalities with proper certificates”, which provides that the State Land and Mapping Committee has to work out and submit maps of municipal lands to the body in charge of the State registry of municipalities by 1 January 2013.

4. The Congress deeply regrets that most of the recommendations addressed in 2003 to the national authorities have not been implemented; nor has a timeline been set to take them on board in the foreseeable future, making the following issues still highly relevant:

a. the insufficient and ambiguous definition of local-self-government² in the law on the status of municipalities (Articles 2 and 3 of the European Charter of Local Self-Government);

b. the parallelism in the local self-governance system, which according to the constitution is carried out by both local executive committees, which are State bodies, and municipalities which only have a very limited role (Articles 3 and 4 of the charter);

c. the subordination, in practice, of municipalities to local executive committees which are part of the State administration (Articles 3 and 4 of the charter);

d. the imprecise division of competences and responsibilities between municipalities and local executive committees (Article 4 of the charter);

e. the weak financial potential of municipalities due to low-level State transfers provided to them and the ineffectiveness of the tax collection mechanisms available to municipalities (Article 9 of the charter);

f. the lack of a procedure for consultation with municipalities and their national associations, in due time and in an appropriate way, in planning and decision making for all matters which concern them directly (Article 4.6 of the charter);

g. the gaps in the legislation governing the status and responsibilities of municipal servants on the one hand, and their rights and obligations on the other (Article 6 of the charter);

h. municipalities, lack of property and the slowness of property transfers from the State to municipalities, in particular as regards land;

i. the lack of clarity of the law on the status of municipalities, regarding the procedure of supervision of municipalities, and notably the local governments, obligation provided by Article 146-IV of the constitution, to report to the parliament about their own operations (Article 8 of the charter);

j. the lack of consultation on the part of central authorities with representatives of the three national associations of municipalities in the decision-making process in the field of local self-government; these associations do not have any active role in practice to represent municipal interests at national level (Article 4.6 of the charter);

k. the fact that the capital city of Azerbaijan is not governed by an integrated local government body such as a democratically elected council, but by an executive authority, accountable only to the president, with no democratic control;

l. the legislative gap concerning the status of Baku, the capital city, although it is foreseen by the law of the Azerbaijan Republic on “territorial structure and administrative territorial division”, namely by Article 5.9 thereof, which states that a law on Baku city must be adopted.

5. The Congress recommends that the Committee of Ministers invite the Azerbaijan authorities to:

a. review the law of the Republic of Azerbaijan on the status of municipalities with the aim of recognising municipalities as decentralised institutions exercising part of the overall functions of the State;

b. reconsider substantially and clarify the division of tasks and powers between parallel structures of local public administration, transferring the most important local public competences to democratically and politically accountable municipalities;

c. put an end to the subordination, in practice, of municipalities to local State committees, in order to allow municipalities to regulate and manage a substantial share of public

affairs under their own responsibility and in the interest of the local population;

d. allocate sustainable financial resources to municipalities, commensurate with their competences, and ensure that municipalities can freely dispose of their resources within the scope of their powers;

e. distribute State transfers and special grants in a transparent and predictable manner, taking the interests of local governments into consideration;

f. improve the efficiency of the tax collection mechanism in municipalities and actively co-operate with municipalities, in order to better ensure adequately qualified personnel to implement these procedures;

g. create appropriate procedures of consultation with municipalities and the national associations which represent them, which take into account criteria of timeliness and appropriateness as provided by the European Charter of Local Self-Government, in the planning and decision-making processes for all matters which concern them directly;

h. ensure a high level of transparency in local government mergers by determining the strategic objectives and goals of any further municipal integration and discussing them with the municipalities concerned as well as with their associations, prior to any change of local government administrative borders;

i. raise the effectiveness of measures to launch capacity-building and proper training programmes for members of municipal staff, in order to improve the quality of their daily administrative work;

j. provide all municipalities with administrative buildings as quickly as possible, and finalise the issuing of property documents, especially those in the capital, in the light of Congress Recommendation 132 (2003) on municipal property and the principles of the European Charter of Local Self-Government;

k. clarify the legislation and determine the exact role of the administrative authorities which are empowered to exercise legal supervision over municipalities, thereby eliminating the uncertainty in the current legislation which contradicts the European Charter of Local Government;

l. abolish the obligation on local governments to report to parliament about their own operations and limit the supervisory authority of central government to the control of lawfulness of municipal acts;

m. involve or strengthen the involvement of representatives of the three national associations of local authorities (villages, towns and cities) in the decision-making processes related to local government in order to give them the possibility to represent the interests of municipalities at national level;

n. consider providing a system of democratic election for the local government of Baku city;

o. establish a law for Baku city as required by Article 5.9 of the law of the Azerbaijan Republic on “territorial structure and administrative territorial division” in the light of Congress Recommendation 219 (2007) on the status of capital cities and Recommendation 133 (2003) on management of capital cities.

6. The Congress invites the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take into consideration the present recommendation and the related Congress resolution on local and regional democracy in Azerbaijan, as well as the explanatory memorandum,

in their own monitoring procedures and other activities related to this member State.

1. Debated and adopted by the Congress on 17 October 2012, 2nd Sitting (see Document [CG\(23\)12](#), explanatory memorandum), rapporteurs: J. Wienen, Netherlands (L, EPP/CD) and G. Mosler-Törnström, Austria (R, SOC).

2. Article 1 of the law on the status of municipalities in Azerbaijan mentions that: “Local self-government in the Republic of Azerbaijan is a system of organizing citizens, activity” and Article 2.2 of this law defines the municipalities as “bodies created by the municipality and not included in the system of state in order to organize municipal service and with a view to resolve issues of local importance”.