

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Recommendation 461 (2021)¹ Monitoring of the application of the European Charter of Local Self-Government in Azerbaijan

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

a. Article 2, paragraph 1.*b.*, of the Charter of the Congress of Local and Regional Authorities of the Council of Europe appended to Statutory Resolution CM/Res(2020)1, 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 1, paragraph 3, of the aforementioned charter, which stipulates that: “[t]he 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 the effective implementation of the principles of the European Charter of Local Self-Government”;

c. Chapter XVIII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

d. the Congress priorities set up for 2021-2026, in particular priority 6.*b* that concerns the quality of representative democracy and citizen participation;

e. the Sustainable Development Goals (SDGs) of the United Nations 2030 Agenda for Sustainable Development, in particular Goals 11 on sustainable cities and communities and 16 on peace, justice and strong institutions;

f. the Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

g. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;

h. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities’ activities, adopted on 4 April 2019;

i. previous Congress Recommendation 326 (2012) on the monitoring of the European Charter of Local Self-Government in Azerbaijan, adopted on 17 October 2012;

j. the explanatory memorandum to the present recommendation on the monitoring of the European Charter of Local Self-Government in Azerbaijan.

2. The Congress points out that:

a. Azerbaijan joined the Council of Europe on 25 January 2001, signed the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”) on 21 December 2001 and ratified it with reservations on 15 April 2002 (Articles 4.3; 7.2; 9.5; 9.6; 10.3). The Charter entered into force with respect to Azerbaijan on 1 August 2002;

b. The Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local and regional democracy in Azerbaijan in the light of the Charter. It instructed Bernd VÖHRINGER Germany (L, EPP/CCE) and Stewart DICKSON, United Kingdom (R, ILDG), with the task of preparing and submitting to the Congress a report on local and regional democracy in Azerbaijan;

c. The monitoring visit took place remotely from 23 to 25 February 2021. During the visit, the Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the visit is appended to the explanatory memorandum to this recommendation;

d. the co-rapporteurs wish to thank the Permanent Representation of Azerbaijan to the Council of Europe and all those whom they met during the visit.

3. The Congress notes with satisfaction that in Azerbaijan:

a. on 13 November 2013, Article 10.3 was included in the list of Charter provisions that are binding in the country;

b. in the last decade, the legislation relevant to local self-government has been partly amended introducing some improvements, including in the system of financing municipalities and in the merit-based selection of municipal staff;

c. an automated municipality information system has been introduced, making payments to and by municipalities available through electronic means, thereby enhancing transparency and improving the collection of local taxes and fees;

d. for the first time, in 2020, the government made use of the opportunity to delegate functions to municipalities, allocating corresponding funds;

e. the process of amalgamation of smaller municipalities continues in an uncontroversial way; in the most recent municipal elections, in 2019, the number of female and young representatives in the municipal councils significantly improved.

4. However, the Congress expresses its concerns on the following issues:

a. municipalities remain unable in practice to exercise the basic functions attributed to them by legislation; in particular, the distribution of powers and functions between municipalities and local executive authorities as well as their concrete relations remain poorly defined and this is detrimental

1. Debated and adopted by the Congress on 17 June 2021, 3rd sitting (see Document CG(2021)40-21, explanatory memorandum), co-rapporteurs: Bernd VÖHRINGER, Germany (L, EPP/CCE) and Stewart DICKSON, United Kingdom (R, ILDG).

to the development of democratically accountable local self-government as prescribed by the Charter;

b. local social, economic and environmental programmes may be aimed at resolving issues not covered by the relevant State programmes, and this prevents the powers of municipalities from being full and exclusive as required by the Charter;

c. no separate law exists on the capital city of Baku, which remains the only capital city in the Council of Europe area which does not have directly elected governance;

d. some municipalities do not yet have land maps indicating their precise borders, giving rise to some controversy as to the resources produced on a disputed piece of land whose classification is not clear;

e. consultation of municipalities and their national associations, while taking place informally, is not an established practice and is not regulated in detail in legislation;

f. conversely, legislation provides for several instruments that would allow citizens' participation in the life of municipalities, but they are only rarely used; the ratification of 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) could help improve the practice of citizens' participation in the country;

g. it remains difficult to hire qualified staff for municipalities, which offer less-attractive jobs than the State administration, due to non-competitive salaries and limited personal development opportunities;

h. the procedure for dismissal of the chair of the municipalities for the cases in which he or she can be removed from office is not sufficiently specified in legislation;

i. despite previous calls on the authorities to repeal the provision, and despite an amendment that restricted the cases in which this applies the legislation still provides that municipalities must report to parliament on their activities; at the same time, a comprehensive law regulating reporting by municipalities has not yet been adopted;

j. municipal revenues remain largely insufficient to fulfil the functions entrusted to municipalities by legislation and prevent municipalities from taking up activities in areas formally open to them; municipalities also have no power to determine the rate of their own taxes and are overall financially dependent on the State;

k. the right to judicial protection is provided against, rather than for, municipalities, as in practice municipalities rarely challenge acts in court, while are sometimes sued for the violation of rights of citizens, especially on property and land issues, due to the unclear division between State-owned and municipality-owned land;

l. in the context of the Covid-19 pandemic, municipalities have been completely sidelined and their budgets have been considerably reduced.

5. In light of the foregoing, the Congress requests that the Committee of Ministers invite the authorities of Azerbaijan to:

a. unambiguously recognise municipalities as public institutions exercising public power as part of the overall public administration; clarify in legislation the relations between municipalities and local State executive bodies, as well as the overlapping responsibilities between municipalities and local executive authorities, which currently create a condition of *de facto* subordination of the former to the latter;

b. amend the Law on the Status of Municipalities and the other laws transferring tasks and functions to municipalities by ensuring that the powers and duties entrusted to municipalities are full and exclusive and that the municipalities have full discretion to exercise their initiative with regard to any matter not excluded from their competence;

c. adopt a law on the status of the capital city and establish a unified and democratically elected municipal government in Baku;

d. complete the process of drawing maps of municipal lands and resolve the remaining issues related to the division between State-owned and municipality-owned land, indicating size and borders of each municipal territory;

e. create a legislative framework for consultation of municipalities and their associations in the process of drafting legislation relevant to them and more broadly to local issues;

f. support the use of instruments of citizens' participation, including when continuing the process of amalgamation of municipalities and when addressing the issue of local government in the re-integrated territories; ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority;

g. improve the status of municipal staff, including in terms of salaries and liability, in order to make civil service in the municipalities attractive for qualified personnel;

h. specify the dismissal procedure of the chair of a municipality for the cases in which he or she can be removed from office;

i. complete the process of repealing provisions in legislation that require municipalities to report to parliament on their activities and adopt a law regulating reporting by municipalities, in line with Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities;

j. reduce municipalities' financial dependence on the State by increasing and making sustainable their own revenues, by allowing municipalities to determine the rates of their taxes and by granting that the principle of concomitant financing be ensured in case of State transfers;

k. ensure that the right to judicial protection of municipalities is guaranteed in practice, in particular by resolving the pending land and property issues that give rise to claims for liability against municipalities and their representatives;

l. in dealing with the Covid-19 pandemic, make sure that municipalities are involved and that their financial resources are not disproportionately impacted.

6. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation on the monitoring of the European Charter of Local Self-Government in Azerbaijan and the accompanying explanatory memorandum in their activities relating to this member State.