35-Year-Old European Charter Obligations for 20-Year-Old Azerbaijani Municipalities

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October 15 marks the 35th anniversary of the opening of the European Charter of Local Self-Government. The Charter was declared open for signature on October 15, 1985 and entered into force on September 1, 1988. Initially, five countries adopted the Charter – Germany, Austria, Denmark, Liechtenstein and Luxembourg. Later, other member states of the Council of Europe joined as well.

Among the countries of the former USSR, Estonia (1995) was the first country where the Charter entered into force, and Georgia (2005) was the last. It entered into force in Latvia in 1997, in Ukraine, Moldova and Russia in 1998, in Lithuania in 1999, and in Azerbaijan and Armenia in 2002. At present, the Charter has been ratified by 47 member states of the Council of Europe.

The European Charter of Local Self-Government regulates standards protecting the rights of local authorities and requires member states that have ratified it to comply with a number of conditions and principles. The preamble to the Charter states that Council of Europe member states which have signed the Charter consider that local self-government is one of the foundations of any democratic system; that the right of citizens to participate in the conduct of public affairs is a democratic principle; that the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen; and that this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their

responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment.

According to the requirements of the Charter, each ratifying country must undertake to comply with at least twenty paragraphs of Part I (Articles 1-11) of the Charter, at least ten of which must be selected from the following "hard core":

- *article 2*
- *article 3, paragraphs 1 and 2*
- *article 4, paragraphs 1, 2, and 4*
- *article 5*
- *article 7, paragraph 1*
- *article 8, paragraph 2*
- *article 9, paragraphs 1, 2, and 3*
- *article 10, paragraph 1*
- *article 11*

After Azerbaijan became a member of the Council of Europe, it adopted the European Charter of Local Self-Government on December 25, 2001, and the document was ratified by parliament and entered into force in 2002. The government stated that in addition to meeting the minimum requirements, it had also made commitments on the following articles and paragraphs:

- *paragraph VI of article 4*
- *paragraphs I and II of article 6*
- *paragraph III of article 7*
- *paragraph III of article 8*
- *paragraphs IV, VII, and VIII of article 9*
- *paragraphs II and III[1] of article 10*

Paragraph 4.3 is one of the most important clauses of the Charter, but it was not adopted by Azerbaijan. The paragraph states that the exercise of public responsibilities should, as a rule, be entrusted to the authorities closest to the citizen. The allocation of any of these responsibilities to

another authority should take into account the extent and nature of the task at hand, as well as the requirements for efficiency and economy. This paragraph captures the general principle of the decentralization of public responsibilities. Its essence is that the powers for the exercise of public responsibilities should be distributed from the bottom up, not from the top down. It is understandable that the state assumes strategic responsibilities (for example, the military-industrial complex). However, if the state "misappropriates" most of the responsibilities of local importance and leaves local self-government bodies without authority, this leads to the centralization of governance in the country. The charter views municipalities with local government as *those authorities which are closest to the citizen* because it is believed that, unlike the central authorities, municipalities are well aware of local problems. Paragraph 4.3 states that powers should be transferred only in special cases (the extent and nature of the task, efficiency and cost requirements). The transfer principle here implies that the task can be transferred to the central government if the municipality is not able to implement it. This is called the *principle of subsidiarity*. The Congress of Local and Regional Authorities of the Council of Europe, in its recommendations on the state of local and regional democracy in Azerbaijan, noted the inclusion of the principles of subsidiarity in municipal legislation.

Another clause which Azerbaijan did not adopt, paragraph 7.2, states: *The conditions of office of local elected representatives shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection*. This clause is aimed at ensuring that elected officials do not face obstacles from third parties in the performance of their duties, and that certain categories of persons are not deprived of the

opportunity to run for office due to financial difficulties. It is envisaged to provide the necessary financial compensation to members of the municipality for the performance of their functions, and to provide financial support to members of the municipality who dedicate a full working day to the municipality in exchange for losing their monthly salary. Municipalities' weak financial capacity in Azerbaijan hinders the fulfillment of this obligation. In particular, the annual revenues of rural municipalities do not allow for the financial security of municipality members. According to official data, the average annual budget of municipalities in the Aghstafa region in 2019 was 5,370 AZN. The average annual budget was 6,200 AZN in Dashkasan, 4,640 AZN in Goranboy, 4,800 AZN in Jalilabad, 2,850 AZN in Lerik, and 2,860 AZN in Yardimli. Let's make a simple calculation: *to pay the minimum wage (250 AZN per month) to the municipality chairman alone, the annual salary fund must be 4,000 AZN. There are municipalities whose budgets do not allow them to pay the chairman's salary. In such cases, it is impossible to pay the salaries of other municipality members*.

Article 9 of the Charter deals with the sources of funding for local authorities. Azerbaijan has not adopted paragraphs 5 and 6 of this article. Paragraph 5 states that *the protection of financially weaker local authorities calls for the institution of financial equalization procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility*. Paragraph 6 states that *local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them*. These clauses emphasize the need to allocate resources on the basis of specific criteria and to regulate this mechanism by law, as well as to consult with local authorities in the process of drafting this

legislation. At present, the legislation provides for targeted and untargeted financial assistance to municipalities from the state budget. The practice of providing targeted financial assistance has only begun in the last two years despite the fact that municipalities have been operating for 20 years. With regard to non-targeted financial assistance, the criteria for the distribution of these funds are limited and cannot ensure a fair distribution. In the 2019 state budget, the amount of financial assistance provided to all municipalities amounted to 5.7 million AZN, or 15.9% of their total revenues. The financial assistance provided to municipalities from the state budget accounted for 0.02% of total state budget expenditures.

The Monitoring Committee of the Congress of Local and Regional Authorities of the Council of Europe has twice monitored the Azerbaijani government's compliance with the Charter. As a result of the first monitoring, in 2003 the Congress of Local and Regional Authorities of the Council of Europe sent a recommendation (126) entitled ***"Local and Regional Democracy in Azerbaijan"*** to the Azerbaijani government, stating the need to accelerate the resolution of problems in local self-government. The following monitoring mission was conducted in 2012 and Recommendation 326 was issued. Although the third monitoring mission was scheduled for 2020, it has been postponed until next year due to the spread of the COVID-19 pandemic.

The nature and character of the issues raised in both recommendations are the same. In the latest Recommendation 326, the Congress expressed regret that most of the recommendations made to the national authorities in Recommendation 126 had not yet been implemented and called on the Azerbaijani government to comply with the ratified articles of the Charter. The Congress noted the problems of local self-government in Azerbaijan which are in conflict with the requirements of the Charter. Some of them include:

- The insufficient and ambiguous definition of local-self-government in the law on the status of municipalities (Articles 2 and 3 of the European Charter of Local Self-Government);
- 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);
- The subordination, in practice, of municipalities to local executive committees which are part of the State administration (Articles 3 and 4 of the charter);
- The imprecise division of competences and responsibilities between municipalities and local executive committees (Article 4 of the charter);
- 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);
- 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);
- 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);

The Congress emphasizes three important points when discussing the existing problems in the institution of local self-government in Azerbaijan. These are the ambiguous status of local self-government bodies, their limited authorities, and their lack of financial resources. For example, the Monitoring Committee, citing Articles 2 and 3 of the Charter, notes *the insufficient and ambiguous definition of local-self-government in the law on the status of municipalities* in Azerbaijan. Article 3 of the Charter explains the concept of local self-government. According to the Charter, *local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage* ***a substantial share of public affairs*** *under their own responsibility and in the interests of the local population*. The Law of the Republic of Azerbaijan "On the Status of Municipalities" recognizes the right of municipalities to perform ***a share of public affairs***. The Explanatory Report on the provisions of the European Charter of Local Self-Government states that the word "ability" in Article 3 includes the need to provide the necessary resources for the effective management of certain public affairs. The meaning of the phrase "under their own responsibility" is that the activities of local self-government bodies are not limited to carrying out the will of higher authorities. In this regard, the Congress proposes to revise the legislation to ensure that municipalities are recognized as decentralized entities exercising state power as general public administration bodies.

As for the financial capacity of municipalities, it is clearly very weak. In 2019, the total annual budget of the 1,606 municipalities operating in Azerbaijan amounted to 36.4 million AZN. This means that the amount of revenues per capita is 3.6 AZN. The average annual budget of a municipality was 22,700 AZN. The average annual budget of municipalities in Baku was 185.800 AZN, and in the Absheron region – 111,800 AZN, while in other areas this figure averaged 15,200 AZN. The city of Baku, which has 53 municipalities, receives 27.1% of

revenues, and the Absheron region, which includes 30 municipalities, receives 9.2%.

Remember that the Azerbaijani government ratified the European Charter of Local Self-Government with a special statement. The statement said that the Republic of Azerbaijan is not able to guarantee the implementation of the provisions of the Charter in the territories occupied by the Republic of Armenia until the liberation of the occupied territories. The occupation of Nagorno-Karabakh and the seven surrounding regions of Azerbaijan by the armed forces of the Republic of Armenia has deprived hundreds of thousands of IDPs of the right to local self-government. The restoration of this right is possible only after the occupation has ended and the IDPs return to the homes they were forced to leave. Although the Azerbaijani state managed to return significant part of the occupied territories as a result of the fighting that began September 27, for objective reasons it will not be possible to restore the rights of local self-government in those areas for some time.

The level of adoption and implementation of certain articles of the European Charter of Local Self-Government is an indicator of the interest of governments in the development of local democracy in their country. Local democracy includes civic participation at the local level, consideration of public opinion in the decision-making process, transparency, and accountability. All this can be achieved through the establishment of strong local self-government institutions and decentralization reforms. Although Azerbaijan has accepted the minimum required obligations of the Charter from day one, it is still in no hurry to adopt several important clauses.

[1] Paragraph III of article 10 was ratified in 2013.

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