

# Local Governments in Türkiye and Azerbaijan in the Context of the European Charter of Local Self-Government: Contradictions and Incompatibilities

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## Abstract

The Council of Europe (CoE) has attached great importance to local governments and local self-government in constructing an integrated Europe and, as a sign of this, has created an international convention entitled “the European Charter of Local Self-Government (ECLSG)”. The core aim of this investigation is to evaluate the local government legislation of Türkiye and Azerbaijan, which are contracting parties, within the framework of the principles and standards of the ECLSG. The assessment found that some of the articles/sub-articles on which both countries had made reservations have disappeared in practice, while some approved articles/sub-articles have yet not been incorporated into domestic legislation. Ultimately, Türkiye accepted twenty sub-articles (the minimum number required to accept the Charter) and made reservations for ten sub-articles. However, Türkiye is not applying the three articles it accepted and is actually applying nine of the ten articles for which it made reservations. On the other hand, Azerbaijan accepted twenty-six sub-articles and made reservations to four sub-articles. Like Türkiye, Azerbaijan does not apply the four articles it accepted, but actually applies three of the four articles to which it made reservations.

**Keywords:** Local Government, Local Self-Government, the European Charter of Local Self-Government (ECLSG), Türkiye, Azerbaijan

## Introduction

Local governments are both essential components of the existence of democracy and a dominant actor in the delivery of public services in countries of the modern world. The globalisation process has had a decisive impact on the current status of

these entities. Essentially, the globalisation process has paved the way for expanding the functions and powers of local government units and has limited the sphere of influence and services of central governments through the trend toward localisation it has triggered. The European Charter of Local Self-Government (ECLSG) was in such a situation. In drafting this document, the goal of strengthening the self-government of local governments and providing them with various guarantees was a vital source of motivation. This is because the ability of local governments to perform the tasks they are expected is directly related to the degree of their self-government.

In this context to keep up with liberal first-world nations and European Union rules, both Türkiye and Azerbaijan have implemented decentralised local government reforms. This study aims to determine whether the local government system of Türkiye and Azerbaijan is compatible with the clauses they have endorsed and reservations entered in the ECLSG. The study's inclusion of Türkiye and Azerbaijan was influenced by the fact that both countries embarked on comprehensive local government reforms in their domestic laws after becoming parties to ECLSG, raising the possibility of a discrepancy within the legal and the actual situation. In this case, the hypothesis is that there are disparities between the *de jure* and the *de facto* status. The investigation is putting this notion to the test. The Committee on Compliance conducted a similar study with the Obligations and Commitments of the Member States of the European Charter of Local Self-Government (Monitoring Committee) in the form of a report for Azerbaijan in 2021 (Vöhringer & Dickson, 2021) and for Türkiye in 2022 (Prebilib & Eray, 2022). During the audit, some contradictory results were obtained, in addition to the results that are consistent with the report in question. This is because the report was based on interviews made with local administrators, whereas this study focuses on the standards in the countries' national laws.

From this point of view, the first part of the study establishes a conceptual framework related to local governments and local self-government; the second part presents the genesis of the ECLSG, its signing process and its principles. In the last part, the articles (2.-11.) of the first part of the Charter related to local self-government are explained in detail, and the domestic legal norms pertaining to local governments of Türkiye and Azerbaijan are evaluated within the framework of the mentioned articles.

### **Conceptual Framework: Local Governments and Local Self-Government**

States are organized on the basis of centralized administration and decentralization within the framework of their historical, political, economic, cultural and administrative characteristics to provide public services. The main element distinguishing it from others is that decentralisation has an autonomous status concerning the centre. In this context, local governments are also a product of the decentralisation philosophy. Local governments, considered as one of the main pillars of democracy at the local level, are entities created to meet the common local needs of citizens and have a certain self-government (Smith, 1998: p. 86; Goldsmith, 1992: p. 393).

The fact that decision-making bodies are elected and able to provide local services through their own bodies and revenue sources without outside interference gives local governments the quality of a democratic and self-governing institution. Self-government, defined as the independent autonomy of an institution, organisation, region, or state, is a form of government that is believed to eliminate or at least minimise the disadvantages of centralised administration and the problems caused by bureaucratic processes. From this perspective, local self-government can be defined as the ability of a community to manage its local affairs through its organs and to have the resources necessary to do so. The concept of local self-government is expressed in the ECLSG as “...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”. In this context, it can be said that local self-government gives local governments the right and authority to establish the ground rules for their activities to enhance the welfare of local community members, to freely carry out their activities within the limits of the law without being subject to the intervention of the central government, and to create the financial resources they need for these activities.

Based on these evaluations, it can be said that there are two different dimensions and three types of local self-government. The first dimension is the freedom of local government units to act without any interference from the central government; the second dimension emphasises the selection and supervision of the organs of these units by the local community (Keleş, 2016: p. 57; Ulusoy & Akdemir, 2019: p. 39-40). Political self-government, which is the first type of local self-government, allows local governments to act autonomously in matters that concern them within limits drawn by-laws (Isufaj, 2014: p. 460); administrative

self-government, which is the second type, allows local governments to make and implement decisions in their affairs through their organs (Zaharia & Bilouseac, 2009: p. 807-808); the last type of financial self-government, on the other hand, refers to the fact that local governments have sufficient property and income resources to carry out their duties and responsibilities without the support of the central government, and have the authority to dispose of these resources (Isufaj, 2014: p. 460). From this point of view, it can be said that in the context of local self-government, the emphasis is on free decision-making in local affairs and having sufficient financial resources to carry them out.

The level of local self-government, which has great importance in limiting central government and preventing local tyranny, has the potential to strengthen local responsiveness and accountability (Wilson, 1998: p. 92; Goldsmith, 1992: p. 393). In any case, local self-government is crucial because it provides a suitable basis for maintaining and developing local democracy (Pratchett, 2004: p. 358). In short, the relationship between local self-government and local democracy is significant in making local government units active and the services provided by these units are more efficient (Çolak & Küçükyılmaz, 2019: p. 684). The degree of local self-government varies according to the state's historical, political, economic, cultural and administrative characteristics (Ladner, et al., 2016: p. 322). However, in recent times, especially in the last quarter of the 20th century, there has been a tendency to strengthen local self-government under the influence of neoliberal philosophy. Within this framework, regulations, international agreements, and conventions have been emerged. The ECLSG, elaborated under the leadership of the Council of Europe (CoE), is the best-known international convention that is emerged within this development.

### **The ECLSG: Emergence, Signature and Principles**

The CoE has prioritised the issue of local self-government since its inception, believing that one of the most critical building blocks of the future integrated Europe will be autonomous local governments (Kelly, 2008: p. 64). The Council has put on its agenda the granting of self-government to local governments due to the insufficient services offered to citizens in European countries from the centre, and has begun to take initiatives in this direction. The European Charter of Municipal Liberties, unanimously adopted by the Council of European Municipalities and Regions in 1953, has been described as the first step towards local self-government (Himsworth, 2015: p. 17; Kirchmair, 2015: p. 127-128). The CoE has brought the issue of self-government to the European public's attention in

several ways to save municipalities from the pressure and control of central authorities and ensure that services are delivered effectively, efficiently and promptly. The issue of local self-government has been raised with increasing vitality and continuity at the Conferences of European Ministers Responsible for Local Government (Pırılıtlı, 1989: p. 59-60). In this context, the CoE has accelerated its work on local government since 1980. In the 1980s, some developments brought local governments to the forefront and strengthened their status politically, administratively, and financially with the discourse of localisation, which reflects globalisation. Central to these developments was the idea of strengthening the self-government of these entities, which are seen as the organisations closest to the citizens (Ladner, et al., 2016: p. 321-322). The ECLSG, created under the leadership of the CoE, is a result of this process and the goal of self-government. The first texts elaborated on this Charter were on the 6th Conference of European Ministers Responsible for Local Government agenda, held in Rome from 8 to 10 November 1984. The document's content and its sanctioning power provoked some discussion among the member states of the CoE. Some Member States considered that the ECLSG should have the character of a recommendation, while others argued that it should enter into force in the form of a treaty text. In fact, in the Committee of Ministers, the final decision-making body of the CoE was decided that the Charter should enter into force as a treaty in conformity with the decision of the majority of Member States, and the Charter was opened for signature by the Member States in Strasbourg on 15 October 1985 (Himsworth, 2015: p. 14). The ECLSG entered into force on 1 September 1988, after the Charter was previously ratified by at least four Member States.

The ECLSG proposes some basic principles and standards to ensure the self-government of local authorities by the central authority and to provide guidance to the countries that have acceded to the Charter to assess the degree of self-government of their local governments and to make the necessary constitutional and legal arrangements. The Charter focuses on issues that give local governments democratic statuses, such as powers, duties, auditing, and financial resources. This situation results from the goal of the CoE to reduce the pressure of the central authority on local governments and to provide these units with financial resources that correspond to their duties. With these aspects, the ECLSG has been called the "*Magna Carta for local communities*" by Andreas Kiefer, the Secretary General of the Congress (Kirchmair, 2015: p. 128). Looking at the structure of the ECLSG, we find that it consists of a preamble and three parts. The preamble of the Charter, which includes 18 articles, explains the purpose of the CoE, mentions the importance of local governments for democracy, and emphasises that citizens have

the right to participate in public affairs, which can best be realised at the local level. For this reason, great importance has been attached to protecting and strengthening local governments in building a decentralised balance of power in Europe.

In this context, in the first part of the condition includes the principle of autonomous local government and the qualifications of autonomous local governments. The second part of the Charter includes obligations of the signatory states to the Charter. This section states that each signatory state to this Charter shall consider itself bound by at least twenty sub-articles of the first part of the Charter, of which it shall select at least ten from among the sub-articles in this article. The third part of the Charter consists of the technical provisions such as signature, ratification, entry into force. The Charter entered into force on 1 September 1988. Forty-six countries with different administrative traditions have since acceded to the Charter. These countries also include Türkiye and Azerbaijan.

### **Local Governments in Türkiye and Azerbaijan within the Scope of the ECLSG: Contradictions and Incompatibilities**

Both countries acceded to the Charter, but they also made reservations about some articles (sub-articles). Türkiye signed the Charter on 21 November 1988, making reservations to Articles 4(1), 6(1), 7(3), 8(3), 9(4, 6, 7), 10(2, 3), and 11. Azerbaijan subscribed to the ECLSG on 21 December 2001 but made reservations to Articles 4(3), 7(2), and 9(5, 6). However, if one looks at both the norms in domestic law and current practice, one comes across intriguing results, such as, ironically, countries comply with some of the articles on which they have made reservations and do not comply with those on which they have not made reservations. To substantiate and support this claim, we will first examine Articles 2-11 of the Charter, which relate to local self-government. They were taken as a reference, and the local governments of Türkiye and Azerbaijan were examined in this context. The results are presented under the following headings for each article (sub-article).

#### ***Article 2 - Constitutional and Legal Foundation for Local Self-Government***

The constitutional and legal basis of local governments is regulated in Article 2 of the Charter. Both countries have adopted this article, which consists of a single sentence and is mandatory.

*“The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.”* In Türkiye, Article 123 of the Constitution made a dual distinction between central and local government; Article 127 then states, *“The establishment, functions, and powers of local governments shall be regulated by law in accordance with the principle of decentralisation.”* Although the term local self-government is not used directly in the Constitution, it can be assumed that the principle of decentralisation is the constitutional basis of local governments based on these provisions. If we look at the regulations in the laws: The Municipality in sub-article “a” of the 3rd article of the Municipality Law No. 5393, the Special Provincial Administration in sub-article “a” of the 3rd article of the Special Provincial Administration Law No. 5302, and the Metropolitan Municipality in sub-article “a” of the 3rd article of the Metropolitan Municipality Law No. 5216, the entities as mentioned earlier were established to meet local common needs by declaring that they have administrative and financial self-government. Village Law No. 442 did not mention the issue of the local self-government. However, due to the fact that the principle of local self-government is expressed as a fundamental element in these three basic laws on local governments, it can be said that Türkiye complies with Article 2 of the ECLSG. On the other hand, in Azerbaijan, articles 142-146 of the Constitution are regulations on local governments. Article 142 defines only municipalities as local government units. However, these articles, which regulate local governments, do not include self-government, the right to regulate and manage local affairs, and local interests. The Law on the Status of Municipalities has content related to this issue. Although there is no dual distinction between the central and local administration, Article 14 of the Law states that municipalities are not included in the central administration system and that these units were established to solve local problems. In summary, the Constitution and the law lack formulations on self-government. In this context, it can be argued that despite adopting of Article 2 of the Charter, Azerbaijani legislation does not meet the conditions outlined in this article.

### ***Article 3 - Concept of Local Self-Government***

It is divided into two sub-articles. Both nations agreed to these binding agreements.

(1) *“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.”* In Türkiye, Article 123 of the Constitution provides, *“The administration shall be a unit with its organisation and functions and shall be regulated by law”*, and Article

127 of the Constitution provides “*The establishment, functions and powers of local governments shall be regulated by law in accordance with the principle of decentralisation*”. Moreover, in the continuation of Article 127 of the Constitution, “*Local administrations; to meet the local common needs of the people of the province, commune or village...*” is an expression. The said articles correspond to the expressions “*...within the framework of the laws...*” and “*...in the interest of the local population...*” in the corresponding sub-article of the Charter. Moreover, the detailed regulation of the powers and privileges of the respective local government units in Laws Nos. 5393 and 5302, and the authorisation to issue binding rules within limits set by the laws, are in line with the sub-article. In this regard, it is noted that this sub-article of the Charter is respected in Türkiye. On the other hand, for the municipalities in Azerbaijan, the scope of jurisdiction established both in the Constitution and in the Law on the Status of Municipalities is not such as to meet the requirements of this sub-article of the Charter. This is because this sub-article indicates that local governments should have a wide range of responsibilities. However, the situation in Azerbaijan is different. Fundamentally, many local services are provided by the Executive Authority (Özmen, 2021: p. 54). From this point of view, it should be noted that this sub-article is not followed in Azerbaijan.

(2) “*This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.*” From this provision, it appears that only the decision-making bodies of local governments are elected, while the appointment method may be used to form executive bodies. In Türkiye, Article 127 of the Constitution stipulates that the decision-making bodies of local governments should be formed through elections. Also, in sub-article “a” of Article 3 of the laws numbered 5393, 5302, and 5216, the requirement is made in the paragraph with the phrase “*...the decision-making body shall be formed through the election of voters*”. In addition, Article 45 of Law No. 5393 provides that appointments to decision-making bodies may be made on issues such as aiding and abetting terrorism. This article violates the sub-article because it is an exceptional situation. Nevertheless, it can be stated that this sub-article of the Charter is generally respected in Türkiye. Again, in Azerbaijan, Article 142 of the Constitution states that municipalities are formed based on elections, and the procedures for municipal elections are established by law. Article 1 of the Law on the Status of Municipalities states that municipalities shall consist of members

elected by free and secret ballot on the basis of the right to equal and direct elections. In this context, this sub-article of the Charter is followed in Azerbaijan.

#### ***Article 4 - Scope of Local Self-Government***

This article consists of six sub-articles. [(1), (2), (4)] is mandatory; [(3), (5), (6)] is compulsory. Both countries approved the mandatory sub-articles. Of the non-mandatory sub-articles, Türkiye made a reservation to the sixth sub-article (6); on the other hand, Azerbaijan, made a reservation to the third sub-article (3).

(1) *“The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.”* Although the tasks of local governments are not specified in the Turkish Constitution, a general framework has been established in Article 123 of the Constitution, according to which the tasks of local governments are regulated by law in line with the principle of decentralisation. The duties of the respective local government units are specified in Article 15 of Law No. 5393, Article 7 of Law No. 5302, and Article 7 of Law No. 5216, as well as in various articles of Law No. 442. This sub-article of the Charter is observed in Türkiye. On the other hand, the responsibilities of local governments in Azerbaijan are regulated not only by laws but also by the Constitution. The duties of municipalities are listed in Article 144 of the Constitution. The responsibilities of municipalities are also included in Articles 4, 5, 6 and 37 of the Law on the Status of Municipalities. This sub-article of the Charter is followed in Azerbaijan.

(2) *“Local authorities shall, within the limits of the law, 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.”* In Türkiye, the phrase *“to undertake all kinds of activities and initiatives to meet the local common needs of the city’s inhabitants”* in sub-article “a” of the Article 15 of Law No. 5393 can be interpreted as a moderate recognition of the general powers of municipalities. However, this phrase is not found in the laws that refer to other local government units. In fact, the phrase *“to carry out all types of activities in order to perform the functions and services prescribed by the laws...”* in sub-article “a” of Article 7 of Law No. 5393 states that the special provincial governments are responsible for the functions only specified in the law. Because of the assessments made, it can be said that this sub-article of the Charter is respected in Türkiye. Again, in Azerbaijan, Article 146 of the Constitution states that municipalities are independent and

exercise their powers to meet local basic needs. However, it has been shown that the list method is preferred in counting the tasks of the municipalities, and there is no other provision for granting general powers to the municipalities. In addition, the fact that the executive power is more dominant in providing local services sometimes leads to the fact that the municipalities remain in the background. In this sense, it is noted that this sub-article of the Charter is not respected in Azerbaijan.

(3) *“Public responsibilities shall 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.”* In Türkiye, Article 14 of Law No. 5393 and Article 6 of Law No. 5302 state that local authorities shall provide common local services. Therefore, this sub-article of the Charter is followed in Türkiye. On the other hand, Azerbaijan has made a reservation to this sub-article of the Charter. Although it is not clearly stated in the Constitution or laws of Azerbaijan, the tasks assigned to municipalities in Articles 5, 6, and 37, especially Article 4 of the Law on the Status of Municipalities, overlap in intending to provide services through citizen-oriented institutions. In this regard, it can be said that this sub-article of the Charter has been observed in Azerbaijan despite the reservation expressed about this sub-article of the Charter.

(4) *“Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.”* Although there are detailed provisions on supervision, administrative tutelage, and central government in Türkiye, regulating issues related to local government units in different laws protects these units from the central government and helps prevent weakening their powers. In Türkiye, this sub-article of the Charter is respected. Again, a substantial part of local public services in Azerbaijan is the responsibility of both the central and local governments. However, local governments are weak compared to the central administration. Article 4 of the Law on the Status of Municipalities states, *“Municipalities may not interfere with the implementation of relevant programs of state agencies on the issues referred to in second sub-article of this article when implementing local social protection and social development programs.”* It can be seen that municipalities do not have full discretion in exercising the powers conferred on them by the law. Based on these assessments, it can be said that this sub-article of the Charter is not respected in Azerbaijan.

(5) *“Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.”* Turkish legislation has no provision for transferring powers from the central government to local governments. Therefore, it should be noted that this sub-article of the Charter is not observed in Türkiye. On the other hand, in Azerbaijan, Article 144 of the Constitution states that legislative and executive bodies may delegate additional powers to municipalities, provided adequate financial resources are allocated. Similarly, Article 42 of the Law on the Status of Municipalities stipulates that legislative and executive bodies may grant additional powers to municipalities, provided that the necessary financial resources are available. This sub-article of the Charter is observed in Azerbaijan.

(6) *“Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.”* Türkiye has made a reservation for this sub-article. However, Article 20 of Local Government Associations Law No. 5355 is consistent with the content of this reservation: *“Only an association representing special provincial administrations and municipalities may be established at the provincial level to protect the interests of local administrations, promote their development, train their personnel, and provide opinions in the drafting of laws affecting local administrations...”* In this context, this sub-article of the Charter is respected in Türkiye, although there is a reservation about it. On the other hand, the legislation of Azerbaijan has provisions for consultation with municipalities on concerns affecting local governments, however they are restricted to financial matters. Articles 1 and 11 of the Law on the Budget System include the municipalities among the organisations that will participate in the negotiations within the budgetary process. Therefore, this sub-article of the Charter is followed in Azerbaijan.

### ***Article 5 - Protection of Local Authority Boundaries***

Both countries have accepted this article, which consists of a single sentence and is mandatory. This article, which is central in the context of strengthening self-government, emphasises that local government boundaries may not be changed without seeking the opinion of the local population.

*“Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.”* In Türkiye, Articles 4-8 of Law No.

5393 provide for various rules and procedures regarding local government boundaries. Consultation with the people living in the area when changing local government boundaries is through the lens of these articles. However, under Law No. 6360 on the Establishment of Metropolitan Municipalities and Twenty-Seven Districts in Fourteen Provinces and Amending Certain Laws and Decrees, which came into effect in 2014, thirty special provincial administrations were abolished. The town municipalities and villages were converted into the neighbourhood and added to the territory of district municipalities. The failure to consult the local administrative units whose legal personality was abolished and the citizens living within their borders violates this article. In this context, it can be claimed that this sub-article is not respected in Türkiye. Again, in Azerbaijan, Article 13 of the Law on the Status of Municipalities states that the opinion of the people living in the locality shall be sought when establishing and changing the territory of the municipality, including the procedures for determining the boundaries to be carried out when establishing, merging, separating, changing the boundaries or terminating the legal entity. It is stipulated that the legal arrangements shall be made considering the socio-economic situation and historical characteristics. Besides, Article 47 of the Law of Land can be interpreted as a regulation that strengthens local self-government in boundary changes by leaving the power of disposition, i.e., the rights of use and management, as well as the protection of the land. In light of the assessments made, it can be argued that Article 5 of the Charter is respected in Azerbaijan.

***Article 6 - Appropriate Administrative Structures and Resources for the Tasks of Local Authorities*** This article consists of two non-mandatory sub-articles. While Türkiye made a reservation in the first sub-article (1) and approved the second sub-article (2), Azerbaijan has approved both sub-articles.

(1) *“Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.”* Türkiye made a reservation for this sub-article. However, the three regulation which Article 48 of Law No. 5393, Article 35 of Law No. 5302 and Article 21 of Law No. 5216 make this reservation superfluous. Because these regulations include that local government councils shall be able to determine their own internal administrative structures. Thus, it should be noted that this sub-article of the Charter is complied with the reservation made in Türkiye. On the other hand, in Azerbaijan, Article 1 of the Law on Municipal Service states that the provisions of the municipal bylaws and other legislation are used as a basis for regulating municipal services, including the

status of municipal employees; other articles of the law contain the structure of the executive body and the rights and duties of employees. From this point of view, it can be said that the municipalities are granted the right to regulate their internal structures, i.e., organisational autonomy. The law also has regulations on the Status of Municipalities granting the municipalities organisational autonomy. Thus, Article 17 of the Law regulates that the municipalities may establish permanent or temporary commissions. From this point of view, this sub-article of the Charter is observed in Azerbaijan.

(2) *“The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.”* In Türkiye, Article 128 of the Constitution reads: *“The qualifications, appointment, duties and powers, rights and obligations, salaries and allowances, and other personnel matters of civil servants and other public employees shall be regulated by law.”* Although it is not clearly stated here that certain criteria will be used for recruitment, i.e., that merit will be considered, it is noted that the appointment of personnel and the regulation of their duties, rights, salaries and allowances will be made. Article 36 of Law No. 5302 and Article 22 of Law No. 5216, contain similar regulations. In this regard, it is noted that this sub-article of the Charter is respected in Türkiye. Again, in various articles of the Law on Municipal Services in Azerbaijan, some provisions that forms the basis for prioritising criteria such as merit and competence in hiring procedures, and meeting the educational, salary, and career expectations of hired personnel (Articles 5-10). In this context, this sub-article of the Charter is observed in Azerbaijan.

#### ***Article 7 - Conditions Under which Responsibilities at Local Level Are Exercised***

This article consists of three sub-articles. The adoption of the first sub-article (1) is mandatory; the adoption of the second (2) and third (3) sub-articles is not mandatory. Both countries approved the mandatory sub-article. Of the non-mandatory sub-articles, Türkiye made a reservation to the third sub-article (3) and approved the second sub-article (2); Azerbaijan, on the other hand, made a reservation to the second sub-article (2) and approved the third sub-article (3).

(1) *“The conditions of office of local elected representatives shall provide for free exercise of their functions.”* The laws regulating local governments in Türkiye also regulate the issues that lead to the dissolution of councils and the termination of the

mayor's office. The conditions under which the mandate ends or the assembly is dissolved constitute an essential guarantee and are in line with the spirit of the Charter. Moreover, the following statement in Article 127 of the Constitution provides legal security to local governments: "*The settlement of objections to the election of the elected bodies of local governments to the status of an organ and their loss shall be carried out by the judiciary...*" However, according to Article 45 of Law No. 5393, the assignments to municipalities contradict this sub-article. Replacing elected mayors by appointment violates this Charter, whose spirit and soul is local self-government. On the other hand, Article 146 of the Azerbaijani Constitution reads: "*...The election of municipal members, the suspension of their powers or the termination of their duties, the early dissolution of municipalities, and the procedure shall be determined by law.*" This provision grants freedom of movement to the municipalities and, consequently, to the elected representatives of these entities. Similar to the Constitution and in more detail, the conditions for municipal members' termination and loss of powers are regulated in Articles 21 and 22 of the Law on the Status of Municipalities. Given these assessments, it is concluded that this sub-article is respected in Azerbaijan.

(2) "*They 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.*" In Türkiye, the regulations on the content of this sub-article are contained in the laws of the local authorities. Article 32 of Law No. 5393 entitles the chairman and members of the assembly to attendance fees for each day they attend committee meetings; Article 36 sets the gross monthly salary for the chairman and members of the municipal committee; and Article 39 regulates the gross monthly salary for the mayor. These provisions are consistent with this sub-article of the Charter. Similar provisions are found in Articles 24, 28, 36 and 67 of Law No. 5302, and Articles 16, 20, and 22 of Law No. 5216. It can therefore be argued that this sub-article of the Charter has been complied with in Türkiye. Again, Azerbaijan has made the reservation to this sub-article of the Charter. Although the Constitution does not contain a provision to this effect, Article 11 of the Law on Municipal Services states: "*The salary of municipal employees shall be determined at the expense of the municipal budget in accordance with the establishment plan approved by the municipality within its financial possibilities.*" It may be noted that this provision corresponds to the phrase "remuneration for work performed" in this sub-article. Article 20 of the Law on the Status of Municipalities reads as follows: "*Social security of the community members who permanently exercise their authority to work in these*

*positions shall be determined by the laws of the Republic of Azerbaijan and the community statutes.”* This provision can also be related to the phrase “*social protection*” in this sub-article. From this point of view, it should be noted that this sub-article of the Charter is respected in Azerbaijan despite the reservation.

(3) *“Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.”* Türkiye has made the reservation to this sub-article of the Charter. However, the regulations made this reservation superfluous. For example, Article 28 of Law No. 5393 reads as follows: *“The mayor may not, during his term of office and for a period of two years after the end of his term of office and for a period of one year after the end of his term of office, enter into any direct or indirect commitment with the municipality and its subsidiaries, and the members of the municipal council may not act as intermediaries or agents.”* Also, Article 20 of Law No. 5302 and Article 17 of Law No. 5216 show that the reservation contained in this sub-article loses its meaning. Therefore, it can be stated that this sub-article is respected in Türkiye. On the other hand, in Azerbaijan, Article 15 of the Law on the Status of Municipalities and Article 2 of the Law on Municipal Services state that municipality members may not be municipality employees. This sub-article is observed in Azerbaijan.

### ***Article 8 - Administrative Supervision of Local Authorities’ Activities***

This article consists of three sub-articles. The adoption of the second sub-article (2) is mandatory; the adoption of the first (1) and third (3) sub-articles is not mandatory. Both countries approved the mandatory sub-article. Of the non-mandatory sub-articles, Türkiye made a reservation to the third sub-article (3) and approved the second sub-article (1); Azerbaijan, on the other hand, approved each sub-article [(1), (3)].

(1) *“Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.”* In Türkiye, Article 127 of the Constitution states that the central government can supervise local governments only within the framework of principles and procedures established by law. In addition to the Constitution, the subject of supervision is also regulated in the laws on local governments. Article 55 of the Law No. 5393 provides for two types of audits, internal and external, and states that such audits shall include compliance with the law and financial and performance audits, and shall be conducted following the provisions of Law No.

5018 on Public Financial Management and Control. Similar provisions are also contained in Act No. 5302. In this regard, this sub-article of the Charter is complied with in Türkiye. Again, in Azerbaijan, Article 146 of the Constitution contains the following provision: *“The state shall supervise the activities of municipalities.”* However, the kind of control is exercised over municipalities is not specified. This issue has been clarified in Article 52 of the Law on the Status of Municipalities. In this article, administrative control refers to compliance with the Constitution and laws by the competent executive body, municipalities, municipal bodies, and their employees; if necessary, voters may be involved in the administrative control of municipal activities. Another provision on this subject is the Law on Administrative Supervision of Activities of Municipalities. Article 1 of the law states that the purpose of administrative control is to ensure that municipalities, municipal bodies, and officials comply with the Constitution, laws, decrees, and presidential resolutions. Thus, this sub-article of the Charter is respected in Azerbaijan.

(2) *“Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.”* In Türkiye, Article 23 of Law No. 5393 provides that the mayor may return to the council for renegotiation of the resolutions of the municipal council that he considers unlawful. In this case, the purpose of returning the council resolution is to ensure that the activity of the local government unit is by the law, as stated in this sub-article. A similar provision is found in Article 15 of Law No. 5302 and 14 of Law No. 5216. In this context, this sub-article of the Charter is observed in Türkiye. On the other hand, in Azerbaijan, Article 144 of the Constitution provides that legislative and executive bodies may grant municipalities additional powers and that legislative and administrative bodies may supervise municipalities in exercising these powers. However, the purpose of the audit is not specified here. However, as mentioned above, Article 1 of the Law on Administrative Supervision over the Activities of Municipalities limits the scope of supervisory activities to the constitutional and legal framework under the provisions set forth in the Constitution and the Law. Moreover, Article 4 of this Law clearly states that the administrative supervision of the activities of the municipalities is carried out only in compliance with the law. In this regard, worthwhile to stress that this sub-article of the Charter is followed in Azerbaijan.

(3) *“Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.”* Türkiye has made a reservation on this sub-article of the Charter. There are various practices and mechanisms under the administrative control of local governments. However, it is not clear in the legislation that the review authority intervenes in a manner that is proportionate to the interests to be protected. Moreover, appointments made in the context of national security violate local democracy and local self-government and thus violate the spirit of the Charter. In this vein, it should be noted that this sub-article of the ECLSG, which is subject to reservation, is not respected in Türkiye. Again, in Azerbaijan, the legislation stipulates that the intervention of local governments must be proportionate to the interests to be protected. Thus, Article 4 of the Law on Administrative Supervision of the Activities of Municipalities stipulates that the interventions to be made in the framework of administrative supervision must not restrict the right of municipalities to solve local problems independently within the framework of legislation and must be proportionate to the purpose envisaged in the law. This sub-article of the Charter is observed in Azerbaijan.

### ***Article 9 - Financial Resources of Local Authorities***

This article consists of eight sub-articles. [(1), (2), (3)] are mandatory; [(4), (5), (6), (7), (8)] are compulsory. The mandatory sub-articles were approved by both countries. Of the non-mandatory sub-articles, Türkiye made reservations to the fourth, sixth, and seventh sub-articles [(4), (6), (7)]; Azerbaijan, made reservations to the fifth and sixth sub-articles [(5), (6)].

(1) *“Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.”* In Türkiye, local governments have financial resources that they can be used within the scope of their powers. These funds are listed in Law No. 2464 on Municipal Revenues, Article 59 of Law No. 5393, Article 42 of Law No. 5302, Article 23 of Law No. 5216, and Article 15 of Law No. 5355. Therefore, this sub-article of the Charter is respected in Türkiye. On the other hand, in Azerbaijan, municipalities have sources of revenue that they can be used to fulfil the assigned tasks. Local taxes and fees are listed in Articles 40 and 43 of the Law on the Status of Municipalities, Article 8 of the Tax Code, and Article 33 of the Law on the Budgetary System. This sub-article of the Charter is followed in Azerbaijan.

(2) *“Local authorities’ financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.”* Article 127 of the Constitution, which regulates local governments in Türkiye, states that these units have a source of income adequate for their functions. From this point of view, it can be said that this sub-article of the Charter is respected in Türkiye. Again, Article 41 of the Law on the Status of Municipalities in Azerbaijan regulates that the sources of income of municipalities shall be determined to be sufficient to fulfil the tasks assigned to them. A similar provision is also included in the Constitution. Thus, Article 144 of the Constitution stipulates that legislative and executive bodies must allocate adequate financial resources to municipalities when delegating additional powers. In this context, this sub-article of the Charter is observed in Azerbaijan.

(3) *“Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.”* Although there are many local taxes and fees that can be levied by municipalities in Türkiye, the power of municipalities to set their levels is extremely limited. For example, Article 44 of Law No. 2464 states, *“Municipal councils shall have the power to determine the height of buildings, taking into account social and economic differences and the size of the neighbourhoods in which they are located.”* From this point of view, it can be said that this sub-article of the Charter is partially respected in Türkiye. Again, in Azerbaijan, Article 144 of the Constitution contains a provision that allows local councils to set local taxes and fees. In this regard, it can be said that fiscal self-government is a constitutional principle in Azerbaijan. Moreover, municipalities have the right and authority to reduce their exemption from local taxes and tax rates, as stipulated in Article 4 of the Tax Code. Therefore, this sub-article of the Charter is observed in Azerbaijan.

(4) *“The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.”* Türkiye has made a reservation on this sub-article of the Charter. However, the fact that the revenue sources of local governments are sufficiently diversified may give these units an advantage in coping with the increase in expenditures they incur in the performance of their functions, and make the reservation formulated in this sub-article unnecessary. From this point of view, it should be noted that this sub-article of the Charter is respected despite the reservation in Türkiye. On the other hand, including various sources of revenue for local governments in Azerbaijani legislation, providing these entities with broad

discretion in the use of municipal property, and using fund revenues independently of local budgets may help ensure that municipal financial structures remain stable in the face of rising service costs. A similar provision for the financial protection of municipalities is found in Article 146 of the Constitution and Article 42 of the Law on the Status of Municipalities. According to this provision, the state compensates additional costs arising from the decisions of state bodies. In this context, it can be said that this sub-article of the Charter has been observed in Azerbaijan.

(5) *“The protection of financially weaker local authorities calls for the institution of financial equalisation 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.”* Financial equalisation among administrations in Türkiye mainly involves sharing tax revenues from the general budget. Related issues are regulated by Law No. 5779 on the Allocation of Tax Revenues from the General Budget to Special Provincial Administrations and Municipalities. The allocation of this share is based on parameters such as the type of local administration, population, area, number of villages and development index. In addition, Article 6 of Law No. 5779 contains similar regulations. Thus, this sub-article of the Charter is respected in Türkiye. Again, Azerbaijan has made a reservation to this sub-article of the Charter. However, in practice, the reservation is rendered redundant by the provision in Article 41 of the Law on the Status of Municipalities, according to which the state compensates the deficits of local budgets through grants and allocates adequate funds to municipalities to raise basic living standards of the population. Therefore, it can be said that this sub-article of the Charter has been observed in Azerbaijan.

(6) *“Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.”* Türkiye has made a reservation to this sub-article of the Charter. However, Article 20 of Law No. 5355 stipulates that the municipalities and special administrations of the provinces may form associations among themselves to express their opinions in legal agreements made for purposes such as protecting the interests of local governments and promoting their development. Therefore, it can be said that this sub-article of the Charter has been respected despite the reservation that Türkiye has made against it. Again, Azerbaijan has also made a reservation on this sub-article of the Charter. In Azerbaijan there is no legal regulation on the consultation of communities in the

distribution of resources. From this point of view, this sub-article of the Charter is not observed in Azerbaijan.

(7) *“As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.”* Türkiye has made a reservation on this sub-article of the Charter. However, the fact that the shares granted to local governments under Law No. 5779 are not subject to any conditions shows that the sub-article is respected despite the reservation. On the other hand, according to the Law on the Status of Municipalities in Azerbaijan, the state grants and subsidies provided to municipalities are not conditional on the financing of specific projects. In other words, this sub-article of the Charter is respected in Azerbaijan.

(8) *“For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.”* In Türkiye, the procedures and principles of borrowing are stipulated in Article 68 of Law No. 5393 and Article 51 of Law No. 5302. From the provisions of these articles, it is clear that local governments are not entirely free to borrow, but they can borrow within the conditions established by law. Therefore, this sub-article of the Charter is observed in Türkiye. Again, under the provisions of the Law on the Fundamentals of Municipal Finance in Azerbaijan, local governments can borrow short or long-term loans from resident banks and other credit institutions. Under the provision of Article 33 of the Law on the Status of Municipalities, the state itself can offer credit facilities to municipalities. From this point of view, it can be said that this sub-article of the Charter is respected in Azerbaijan.

### ***Article 10 - Local Authorities' Right to Associate***

This article consists of three sub-articles. The adoption of the first sub-article (1) is mandatory; the adoption of the second (2) and third (3) sub-articles is not mandatory. The mandatory sub-article was approved by both countries. Of the non-mandatory sub-articles, Türkiye made a reservation, while Azerbaijan agreed to each sub-article.

(1) *“Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.”* In Türkiye, Article 127 of the Constitution states that local authorities may merge with the President of the Republic's approval to perform certain public functions. Article 4 of Law No. 5355 stipulates that a

general purpose or a merger whose purpose is not clearly defined cannot be established for all local government functions. The sub-article “o” of the 18th article of Law No. 5393 regulates the formation of mergers with other local governments, joining or leaving existing mergers; the sub-article “p” states the power to decide on cooperation with local government associations in the country rests with the local council. A similar provision is found in Article 10 of Law No. 5302 and 20 of Law No. 5355. In this context, this sub-article of the Charter is followed in Türkiye. Again, in Azerbaijan, Article 10 of the Law on the Status of Municipalities states that municipalities may form associations to perform certain public functions. In this regard, it should be noted that this sub-article of the Charter is also observed in Azerbaijan.

(2) *“The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.”* Türkiye has made a reservation to this sub-article of the Charter. However, municipalities and special provincial administrations have granted the opportunity to become founding members or members of international organisations dealing with issues related to their areas of responsibility, provided that they operate in accordance with international agreements. The relevant articles (62 and 74) of Laws Nos. 5302 and 5393 have, in practice, removed the reservation in this sub-article. Therefore, it should be noted that this sub-article of the Charter has been complied with in Türkiye despite the reservation. On the other hand, in Azerbaijan, Article 10 of the Law on the Status of Municipalities regulates that municipalities and associations of municipalities may conclude cooperation agreements with local government authorities of foreign states and become members of specialised organisations of local government authorities by agreement with the competent executive body. In this regard, Azerbaijan complies with this sub-article of the Charter.

(3) *“Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.”* Türkiye has made a reservation to this sub-article of the Charter. However, this reservation, based on the wording of Article 10(2) of the Charter, is unnecessary, and this sub-article is followed in Türkiye. Again, in Azerbaijan, it can be stated that this sub-article is complied with, in view of evaluating the second sub-article of Article 10 of the Charter.

### ***Article 11 - Legal Protection of Local Self-Government***

Türkiye has made a reservation to this article, acceptance of which is mandatory; Azerbaijan has ratified the article.

*“Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.”* Türkiye has made a reservation to this sub-article of the Charter. However, Article 125 of the Constitution states that legal recourse is open against all types of acts and transactions of the administration; Article 23 of Law No. 5393 states that the mayor may appeal to the administrative courts against decisions that have become final through the decision of the municipal council, and those the mayor’s duties include representing the municipality as plaintiff or defendant in Article 38. Similar provisions are contained in Articles 27 and 30 of Law No. 5302 and Articles 14 and 18 of Law No. 5216. The presence of these provisions in the legislation shows that the sub-article was respected despite the reservation. On the other hand, in Azerbaijan, Article 146 of the Constitution states that the judiciary protects communities. A similar provision is found in Article 50 of the Law on the Status of Municipalities. According to it, municipal bodies can file an action for annulment against decisions of state officials and state employees that violate the rights of municipalities. It is clear from this provision that local governments may appeal to the judiciary. Therefore, this sub-article of the Charter is followed in Azerbaijan.

Acting by the principles of the first part of the ECLSG will not only contribute to developing the understanding of local democracy in countries but also protect local governments, which are the entities closest to the citizens, and lay the foundation for their more robust institutional structure. In this context, ten of some articles of the first part of the Charter must be accepted. This obligation is stipulated in the second part of the Charter.

### **Conclusion**

The CoE attaches great importance to local authorities on the way to the ideal of an integrated Europe. One of the most important indicators of this ideal is the regulation of the ECLSG. Although Türkiye has accepted many of the principles of the ECLSG, the fact that it has expressed reservations on some articles/sub-articles, important for local self-government, can be interpreted as a shortcoming in the development of local democracy. However, due to the regulations made in

Türkiye, especially in 2004 and 2005 and thereafter, in the legislation on local governments, most of the above points have partially or entirely lost their significance in practice. The fact that the legal provisions actually eliminate the reservations is also true for Azerbaijan. In fact, Azerbaijan has made various attempts to become a democratic constitutional state since its independence.

This study scrutinizes whether Türkiye and Azerbaijan comply with their obligations under the ECLSG in national law. The assessment found that some of the articles/sub-articles on which both countries had made reservations have disappeared in practice, while some approved articles/sub-articles have yet not been incorporated into domestic legislation. Thirty sub-articles in the ten articles of the ECLSG relate directly to local self-government. Ultimately, Türkiye accepted twenty sub-articles (the minimum number required to accept the Charter) and made reservations for ten sub-articles. However, Türkiye is not applying the three articles it accepted and is actually applying nine of the ten articles for which it made reservations. On the other hand, Azerbaijan accepted twenty-six sub-articles and made reservations to four sub-articles. Like Türkiye, Azerbaijan does not apply the four articles it accepted, but actually applies three of the four articles to which it made reservations. The findings are unique contribution to the field in that the ECLSG experience of both nations indicates partial variances from the legislative rules signed from the outset.

Moreover, the results obtained differ in some respects from the reports prepared for Türkiye and Azerbaijan by the Monitoring Committee. This difference is believed to be due to the fact that the report is prepared on the ground, while the present study is generally formulated through legislation. In this regard, it was found that Azerbaijan has made reservations about fewer articles/sub-articles than in Türkiye but that the legislation on local self-government in Türkiye is more compatible with the ECLSG than in Azerbaijan.

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