



The accordance with the regulatory legislation on local self-governments and the “European Charter of Local Self-Government”

General information

In 1968, western European countries adopted a “Declaration of principles on local self-government”, that was made as a convention in 1981 and became compulsory for the member countries of the European Union. In 1984, during the Rome meeting, the member countries of the European Union adopted the European Charter of self-governments; The Charter was opened for signature as a convention in 1985.

In May 23, 2002 Georgia has become party to the above referred Charter and it was ratified in October 26 of 2004 (was put into force in April 1, 2005). At the same time, by resolution of the Parliament of Georgia, all chapters and articles of the Charter has not been ratified. Thus, following parts of the Charter were not ratified: Paragraph 6 of article 4, Article 5, paragraph 2 of article 6, paragraph 9 of article 6, paragraphs 2 and 3 of article 10: the right of establishment of associations (including international associations) for the purpose of promotion of common interests and provision of support, as well as the right to cooperate with similar public entities.¹

Article, paragraph	Prioritized articles	Other articles	Article, paragraph	Prioritized articles	Other articles
2	+		8.1		+
3.1	+		8.2	+	
3.2	+		8.3		+
4.1	+		9.1	+	
4.2	+		9.2	+	
4.3		+	9.3	+	
4.4	+		9.4		+
4.5		+	9.5		+
4.6		-	9.6		-
5	-		9.7		+
6.1		+	9.8		+
6.2		-	10.1	+	
7.1	+		10.2		-
7.2		+	10.3		-
7.3		+	11	+	

¹ General report on the ability of local authorities to determine their own internal structures, The Congress of local and regional authorities, Council of Europe, Strasbourg, April, 2009

As an international legal act, the Charter has priority over the national legislation (institutional and ordinary laws) and is only one step below the Constitution. The organic (institutional) law of Georgia on Local Self-Government is based on the Georgian Constitution and European Charter of Local Self-Government.

According to the legislation (Law of Georgia on State Supervision of Local Self-Government Authorities and etc.) all new provisions were aimed at ensuring compatibility of above-noted Law with the European Charter on Local Self-Government.²

Herewith, it should be mentioned that there are many incompatibilities between Georgian legislation and the Charter. The number of norms declared by the Georgian normative acts contravenes either certain articles from the Charter or the spirit of the Charter itself.

Compliances and non-compliances in articles

Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognized in domestic legislation, and where practicable in the constitution.

The legislation, regulating local self-governments, is absolutely compatible with this article of the Charter. Furthermore, the Charter is declared to be the basis of the legislation and is given in the preamble of the law of Georgia on local self-governments.

Article 3 – Concept of local self-government

3.1. 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.

The list of facilities of state or local importance (roads, public buildings and services, land, forest and etc) has not been finalized yet. Inventory of such facilities and assets has not been conducted yet, which in its turn means further delay in executing their authorities and responsibilities, as provided by the law.

3.2. 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.

There is no counteraction between the Charter and Georgian legislation.

2 Report on the reception of the European Charter of Local Self-Government into the legal systems of ratifying countries and on the legal protection of local self-government, The Congress of local and regional authorities, Council of Europe, Strasbourg, July, 2009.

Article 4 – Scope of local self-government

4.1. 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.

The amendment to the organic law of March 27, 2009 is quite ludicrous; new “authority” was added to the Voluntary Authorities of the local self-governments, according to which, local self-government can provide material-technical assistance for the state body “on voluntary basis”. It is worth mentioning that the law that was accepted on March 2009, but was announced to be put in action since 2006, thus became reflexive and justified all material-technical “assistances”, (prohibited by the Georgian legislation) provided by municipalities for the central government during 2006-2008.

4.2. 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.

Within the frames set by the Georgian legislation (Law of Georgia on Local Self Government, Article 18) the self-governing unit shall be entitled at its own initiative to make decision on creation and development of social, cultural and educational infrastructure not belonging to its exclusive authorities or to the authorities of the state body and is not prohibited for the self-governing unit.

Herewith, the law explains neither corresponding procedures, nor potential fields. This gives the central government an opportunity to interfere in the competences of local self-governments. We can bring the example of “village support state programme”. Wide range of activities, that were meant to be implemented by local self-government, was planned and is being executed by the central government without any agreement with the municipalities.

4.3. Public responsibilities shall generally be exercised, in preference, by those authorities who 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.

The central government takes their control on the spheres (for example water supply), that has always been the prerogative of local self-government in any developed country, during any era, (even in the Soviet Union).

As a result of the amendments to the organic law on “local self-governments” of 2008, water supply system and control over it (including setting tariffs) was taken away from local self-governments. Regulation of the tariffs became the prerogative of Energy Regulatory Committee (SEMEK). The question about the owner of the property remained open – privatization of such objects had been planned, but big investors were not attracted. This brought disastrous results in water supply in some municipalities of Georgia. The government was forced to “delegate” financing of the referred structure to the local self-governments, despite of the fact that they had not had corresponding authority any more.

4.4. 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.

Self-governing unit perform its exclusive functions in compliance with the rule established by the Georgian legislation independently and at their own responsibilities. Exclusive authorities of the self-governing unit shall be defined by law (Organic Law on Local Self-Government, Article 16).

Herewith, the central government frequently interferes in execution of the authorities delegated to local self-government (organization of public services and amenities, roads of local importance) and finances certain programs on behalf of the central government in frames of the local self-government's limited financial resources. For example, financing the roads of local importance by the department of motorway road, that subordinates to the central government.

The regulations about property are also irrelevant to the principles of the Charter. Municipalities are entitled to issue the right on usage of their property according to their own vision, as for its disposal, it is the authority of the central government, in particular it is president's prerogative since 2007.

4.5. 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.

Delegation of the authorities to the self-governing unit by the bodies of the state authorities shall be allowed either on the basis of legal acts of Georgia or the Agreement that shall be accompanied by the transfer of commensurate material and financial resources (Organic Law on Local Self-Government, Article 17).

Herewith, according to the amendments to the law of 2008, the circuit of action of special transfers became unlimited, since this period, the local self-governments were entitled the "authority" to address those sources for financing the authorities of the central government, if the latter "asked" the local self-government for such assistance. Analogously, and most probably for the same reason, the spheres for using reserve fund had been expanded either.

4.6. 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.

Georgia has not joined this paragraph, accordingly has not taken the responsibility on consulting self-governmental bodies during the planning process.

Article 5 – Protection of local authority boundaries

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.

Georgia has not joined this paragraph; accordingly the requirements of this paragraph are not accomplished.

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

6.1. 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.

According to the legislation, Municipality consists of structural units and territorial bodies of governance. Territorial bodies of governance are established in settlements and/or part of the unit of local self-governance (districts of settlements) directly by decision of the council.

Though, according to the article 38 of the organic law on local self-governments, the authorities of the head of the territorial bodies are defined by the local self-government. These very authorities are also defined by article 42 of the same law, and thus violate the principles of the Charter; furthermore, these two articles of the organic law are controversial with its content.

6.2. 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.

Georgia has not joined this paragraph, besides considering the existing situation in Georgia we can conclude that execution of this paragraph is not real for the given moment.

Article 7 – Conditions under which responsibilities at local level are exercised

7.1. The conditions of office of local elected representatives shall provide for free exercise of their functions.

There is neither restricting nor regulatory acts on the legislative level. Law of Georgia on “local Self-government” does not include any regulation acts in this respect. Thus, local self-governments decide free exercise of their functions by themselves.

7.2. 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.

The regulatory legislation on local self-governments does not directly include financial compensation for expenses incurred in the exercise of the office functions. The legislation envisages only remuneration for work done and corresponding social welfare protection. The officials of local self-government are public officials; consequently the law of Georgia on “public services” regulates work reimbursement and related issues in local self-governing units. According to law “on Public Services” (article 37.2), the head of the state institutions has the right to give additional payments to the public officials during the financial year, according to the law established by the Sakrebulo, taking into consideration the performance of extremely important functions and overtime work. According to the law of Georgia on “Local Self-government” (article 22.2.k) and under the normative acts, set by the Georgian legislation, setting the rates for officials of Sakrebulo, other officials of local self-government and public officials is an exclusive authority of local self-government.

7.3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

This requirement of the Charter is accomplished and this issue is regulated by the law of Georgia on “local self-governments” and by “Status of the Member of the Local Representative Body – Sakrebulo”.

According to the law of Georgia on “local self-governments” (article 32) and “Status of the Member of the Local Representative Body – Sakrebulo” (article 7), The Sakrebulo member does not have the right to: be a member of another representative body; work in judicial body and bodies of the Ministry of Interior and the Ministry of Defence, work in the state body, which carries out state supervision functions over local self-government units in compliance with the legislation; work in the Gangeoba (City Hall) of self-government unit; participate in managing enterprises of self-government unit (to be director, deputy director, a member of the Board of Directors, or the Supervisory Board, etc), also to be a director or deputy director of the enterprise which is funded from the budget of self-government unit, work in apparatus of Sakrebulo.

Article 8 – Administrative supervision of local authorities' activities

8.1. 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.

Administrative supervision of local self-governing units is not regulated by the Constitution of Georgia. It is defined by the law on “Administrative supervision of local authorities' activities” that was accepted on June 8, 2007.

According to the amendments to the Organic law of 2008, the rule of supervision of self-governing unit exercising the authorities delegated by the state bodies was changed; Neither law nor contract is named as determinative, that counteracts not only the above mentioned article of the Charter, but also other norms of the organic law.

8.2. 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.

State supervision is activity, executed by the state bodies, that aims to ensure legality and expediency of the activities of the local self-government bodies and officials. The forms of supervision are: supervision of legality and supervision of the execution of the delegated authorities. Supervision of the execution of the delegated authorities is caused by expediency, which ensures execution of the delegated authorities by the local self-governments in compliance with state interests and indications of the authority delegating its power.

Expediency implies the right of the supervising body, to give guidelines to the corresponding bodies and officials of the local self-governments about the ways and volumes how the delegated task should be carried out, or by whom; and at the same time has the right to ask for the information about the course of matter. In this case on the one hand state standards should be distinct and the supervision of the activities should be carried out for checking their accordance with the standards; and on the other hand, the frames of supervision is defined by the limited finances that have been transferred for exercising the delegated authority. Thus, the supervision, caused by the expediency, is connected to objective criteria, according to which, the local self-governments are given the opportunity to stand for their interests. The Charter directly indicates that, when certain functions are delegated to the local self-governments, they should be provided with a free exercise of their functions. If the local self-governments do not have discretion at some level, they will never meet their views with local interests. Keeping balance in this case is of great importance.

8.3. 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.

According to the article 73 of the Constitution of Georgia, the role of the president of Georgia is important and politicized while supervising the activities of the local self-government. In particular, the president of Georgia, with the consent of the Parliament, is entitled to suspend the activity of the institutions of self-government or other representative bodies of territorial units or dismiss them if their activity endangers the sovereignty, territorial integrity of the country or the exercise of constitutional authority of state bodies;

The number of state institutions for financial control has increased as a result of the amendments to the Organic law of 2008, but it is worth mentioning that the law neither lists the institutions nor describes appropriate procedures. The normative acts, that should define corresponding authorities and procedures for its execution, are not listed as well.

Article 9 – Financial resources of local authorities

9.1. 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.

This requirement of the paragraph is mainly accomplished and the local self-government is entitled to financial resources of its own, of which they may dispose freely within the framework of their powers. According to the organic Law of Georgia on Local Self Government, Article 50 and law on “Local Self-government Unit Budget”, article 9, revenues of the local self-governments consists of their own revenues and other finances allocated from other budgets. The own revenues of the local self-governments are local fees and other charges, also equalization transfer and other revenues envisaged by the Georgian legislation for local self-governments. Special and purposed transfers, as well as other revenues envisaged by the Georgian legislation belong to other finances that are allocated from other budgets. Local self-government are entitled spend its own revenues independently and at its own.

9.2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.

Accomplishment of this paragraph is not directly declared in the Georgian legislation. The authorities of local self-governments are not envisaged by the Constitution of Georgia and only the organic law on local self-government envisages them; besides the Georgian legislation does not include direct directive about the subject that their resources should be commensurate with their responsibilities. It is also worth mentioning that the local self-governments lack resources for financing their own authorities³.

9.3. 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.

³ “Expenditure policy of Local self-governments in Georgia”, Analytical research, Caucasian Institute for Economic and Social Research, www.ciesr.org

One part of the financial resources of the local self-governments is formulated from local taxes and charges. The rate of local taxes and charges are defined by the local self-government, taken into consideration the limits set by the Georgian legislation. There is one local tax and six local charges for the present day in Georgia. Thus, the requirements of this paragraph of the Charter are formally fulfilled.

9.4. 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.

The requirements of this paragraph are less accomplished, as local revenues are not diversified. As it was mentioned in the comment of the paragraph above, the local self-governments have one local tax and six local charges as their own revenue, as well as equalization transfer. Though, access to the national capital market is within the limits of the law, as well as borrowing for capital investment. This issue is mentioned in the comment of the paragraph 9.8.

9.5. 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.

The requirements of this paragraph have been accomplished since 2007, as there is the formula of equalization transfer, set by the law. Equalization transfers are transferred from state budget to the budget of self-governing unit for the purpose to perform its exclusive functions as financial support. The rule for calculation of the amount of equalization transfer shall be defined by the Law of Georgia on the “Budget of Local Self-Governing Unit”. The equalization formula was changed due to the legislative changes of 2007, and nowadays the new rule already includes equalization of both, expenditures and revenues. Although it is worth mentioning that the minister of finance has not yet approved the coefficients that are needed for calculating by the formula.

9.6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

Georgia has not joined this paragraph; accordingly the requirements of this paragraph are not accomplished.

9.7. 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.

According to the legislation in force, the local self-governments can take grant from organizations as follows:

- International charity organizations, humanitarian or any other public organization, financial-credit institutions, governments of foreign countries or its representatives, also from foreign industrial or non-industrial persons.
- A Georgian non-industrial juridical person, whose mission according to the statute is making property for charity or for supporting any other activity for public welfare.

The local self-government is allowed to fill the grant application form in two cases: (1) when the grant giver announces request for proposals; (2) or prepare a grant application with its own initiative and send to the fund for financing. The grant, received by the local self-governments is totally transferred to their own budgets.

Please see the comments on paragraphs 4.1 and 4.5 about the non-compliance between the Georgian legislation and these paragraphs of the charter.

9.8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

Accomplishment of this paragraph is seriously limited. According to the rule, set by the law, local self-governing unit can take loan from the Government of Georgia, in particular from the Ministry of Finance, or with its authorization. In other words, loan, taken from the Government of Georgia is considered as a state loan, and procedures from taking loans is regulated by the law of Georgia on “state loan”. Though, the procedures for taking loans is not written out in details in the Georgian legislation, that’s why the local self-governments need to be guided mainly according to the articles of contract laws and general legislative records. Local Self-governing unit’s financial condition is worsened by fact that the access to the national capital market is within the limits. Against the principles of Article 9 of the Charter, according to the Article 23 of the law on “Local Self-government Unit Budget” Self-governing unit can take from the Government of Georgia or commercial banks only with the authorization of Government of Georgia⁴.

Article 10 – Local authorities' right to associate

10.1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.

For realisation the authorities, assigned in this paragraph, Self-governing units are given the right to establish unions (associations) according to the Organic law on “local self-governments”. In particular, according to the Article 7, Self-governing units have the right to establish unions (associations) and are authorized to consult with the bodies of the state authorities on behalf of self-governing units; they can also participate in the process of preliminary discussions and consultations of draft laws in relation with local self-government. Non-commercial juridical persons of the local self-governments are authorized to cooperate and/or join the international unions (associations) of self-governing units, in compliance with the rule set by the Georgian Legislation. Establishment of separate associations is limited, in view of the fact that it needs consent of at least 50 % of the municipalities. Thus only National Association of local Authorities (NALA) is established in Georgia.

10.2. 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 recognized in each State.

⁴ “Annual report on development of local democracy in Georgia – 2006”, Open Society Georgian Foundation (OSGF) – Georgia, Tbilisi 2007., p.88

Georgia has not joined this paragraph; accordingly the requirements of this paragraph are not accomplished.

10.3. 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.

Georgia has not joined this paragraph; though there are certain local self-governments in Georgia, which co-operate with their counterparts in other countries.

Article 11 – Legal protection of local self-government

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.

Local authorities (officials) have the right (“Law of Georgia on State Supervision of Local Self-Government Authorities” paragraph 7 of article 9) to appeal against a decision of government of Georgia, on normative act or some part of the act issued by the local authorities (officials), within the frames set by the Georgian legislation, if Local authorities (officials) believe that the decision is not legitimate.

Besides, there are certain counteractions in legislation in force, in particular, according to the amendments to the law of Georgia on “the Capital of Georgia – Tbilisi”, the mayor of Tbilisi personally decides disputes in legal entity of public law, while in any other cases only the court decides related arguments, and even the president of Georgia is not allowed to do that.

Local self-governments have no right to bring an action before the Constitutional Court. But local authorities can defend their rights in ordinary courts when their rights are breached by the central government.

Brief conclusion

The situation practically is different from the one given in the legislative regulations. Thus, one thing is how the Georgian legislation compliances with the Charter; and another thing is how the main requirements of the Charter, taken by the government of Georgia, are accomplished. The paragraphs of the “European Charter of Local Self-Government” are violated and the level of awareness about the Charter is very low among local self-governments⁵.

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⁵ *The Council of Europe has made several recommendations in relation to the reforms (including the decentralization process) that are under way in Georgia: resolutions 1415 (2005) and 1477 (2006), and the document 10779 (2006). The importance of these recommendations is highlighted in the ENP (European Neighborhood Policy) Action Plan.*