



**NGO ALLIANCE FOR MUNICIPAL DEVELOPMENT**

**ASSESSMENT OF CONFORMITY OF  
ORGANIZATIONAL AND OPERATIONAL  
ASPECTS OF MUNICIPALITIES IN AZERBAIJAN  
WITH PRINCIPLES AND REQUIREMENTS OF  
EUROPEAN CHARTER  
MONITORING REPORT**

**Baku - 2011**



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## **Overview of NGO Alliance for Municipal Development**

**NGO Alliance for Municipal Development** was established in May, 2009 by NGO operating in the field of better local self-governance in Azerbaijan. The alliance primarily seeks to develop and implement sound strategies on better local self-governments (municipalities) and coordinate the efforts of and collaboration between national NGOs in order to strengthen the organizational and institutional capacity of municipalities. The Alliance's mission is to support decentralization and democratic processes.

### **The Alliance has the following organizational members:**

- “Support for Economic Initiatives” Public Union
- “Towards Civil Society” Center
- “Aran” Humanitarian Regional Development Public Union
- Economic Research Center
- "For the Civil Society” Independent Consultation and Assistance Center
- “Multimedia” Information Systems and Technologies Center
- “Solidarity Among Women” Public Union

The initial funding support for Alliance's activities was provided by Oxfam GB, OSI-Assistance Foundation and Marshal Foundation. The Alliance has a strategic plan with strategic directions of its involvement for 2009-2012 years.

**The activities of the Alliance** include round tables on a range of local self-governance issues, journalist studies to report on municipal problems via Media broadly, reviewing present situation of local self-governance in Azerbaijan, developing policy papers on various local self-governance problems and making recommendations to the government and carrying out advocacy campaigns of suggestions made. Further information about the Alliance can be found on [www.localdemocracy.az](http://www.localdemocracy.az).

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## Executive Summary

### Major Findings

It is already 10<sup>th</sup> anniversary of the country's membership to European Charter of Local Self-Government. By joining the Charter in December 2001, Azerbaijan undertook various commitments regarding better self-governance in the country (*signing 25 out of 30 articles of the 1<sup>st</sup> chapter of the Charter*). Over the past period, a number of laws and other normative acts have been enacted establishing the legislative basis of forming and developing local self-governance in the country, three municipal elections held, as well as, some measures taken to establish and develop municipalities in practice.

This report is based on the monitoring which tried to determine the extent to which the legislative basis of local self-governance and municipalities already established in the country are in line with the principles and requirements of the Charter.

Upon developing this report, the monitoring group composed of the member organizations of the Alliance reviewed European Charter of Local Self-Government, explanatory "notes" of Council of Europe's experts to the provisions of the Charter, relevant documents developed by various institutions of Council of Europe dealing with various aspects of local self-governance, recommendations and commentaries of European Congress of Local and Regional Authorities, Minister's Committee and other institutions aimed at resolving specific problems of local self-governance in both Azerbaijan and other countries, held the expertise of laws forming the legal-normative basis of municipalities' operations in Azerbaijan, and studied existing various challenges associated with municipalities.

According to the conclusion that the monitoring group has arrived at, the following are the major challenges uncovered upon assessing the current legislation of municipalities, as well as, the real situation of the establishment, running and development of municipalities against the background of European Charter's principles, requirements and recommendations:

- The legally defined status and scope of competence of municipalities in Azerbaijan in the Constitution and law on "status of municipalities" do not enable municipalities either to have a status of real authority or be identified as a body part of the entire public administration;
- The real scope of competence of municipalities is confined to maintaining the municipal roads, delivering social assistance to low-income citizens that are not covered by the state social programmes, maintaining cemeteries and organizing funerals;
- There is a problem of overlapping responsibilities in local governance of Azerbaijan in that the legislation assigns the same responsibility to a state body along with municipalities;
- Municipalities in Azerbaijan suffer from extremely weak financial potential. The per capita incomes of local budgets in the country amounted to around 3.2 manats in 2010. Although a number of income sources are identified for municipalities in the legislation, a significant majority of these sources are not sustainable and do not bring in high income;
- The amount of transfers for municipalities from state budget is very low. The distribution mechanism of transfers among municipalities is flawed and it is thus unclear which criteria are referred to upon distributing the transfers among various municipalities and assessing the their needs for financial resources;
- In the recent years, some state bodies are endorsing stiffer control of state bodies over municipalities;
- Cases of municipalities having to provide reports not required by the legislation are becoming more common, i.e., local executive committees unlawfully require that municipalities provide a monthly report on the land turnover and a biannual report on their financial status;
- The fact that there is no legislation governing the relations between local state bodies and municipalities leads to the breach of the entitlement to local self-governance;
- Imprecise division of responsibilities between municipalities and local state executive committees, as well as, incomplete and unexceptional responsibilities of municipalities are often the source of conflicts;

- The relations between municipalities and local executive committees are based on the principles of «dominance» and «dependence»;
- Cases of executive committees hindering municipalities to dispose their budget funds independently are becoming more common;
- Municipalities have not yet received documents verifying their properties including administrative buildings, as well as, their rights to these properties. Although it is 11 years since the inception of municipalities in Azerbaijan, a great majority of municipalities do not have an administrative building yet. The central apparatus of most of the village municipalities is accommodated in several rooms in the building of the representation of executive committee;
- Three (urban, village and town) national associations established as municipal unions operate weakly and do not have notable operations in the field of defending municipalities interests and putting forward an advanced concept or strategy of local self-governance;
- There are serious gaps and problems in the legislation governing the status and responsibilities, and rights and obligations of municipal servants;
- The existing skills of personnel do not allow for the efficient organization of local self-governance. The major reason is because there is no system of training and retraining municipal personnel;
- There is no clarity around the formation principles of municipalities in Azerbaijan. Since no administrative-territorial division (village, settlement, district and town) of local self-governments is considered, there is no practice of differentiation of municipal responsibilities based on the administrative-territorial division;
- Although various forms of public control over municipalities are applied in Azerbaijan, they cannot be considered advanced from the standpoint of efficient organization of municipalities' activities. There are grave problems in both intra-municipal control and public control over municipalities.

The relevant chapters of the report deal with these problems in more details.

### **Recommendations**

The authors of the monitoring report hold that the existing problems can be resolved and municipalities can be developed through carrying out comprehensive reforms for administrative and fiscal decentralization and improving the relevant legislation in line with the principles and requirements of European Charter. The following are recommended as crucial components of local self-governance development:

#### **Status and competence of Municipalities:**

- The legislation must provide for the norms defining the status of municipalities;
- In line with the European Charter of Local Self-Government, the exceptional responsibilities must be assigned to municipalities and the clear-cut division of responsibilities between local state executive bodies and municipalities must be provided.
- Contours of responsibilities that exceptionally belong to municipalities and that can be transferred from state bodies to municipalities must be clearly defined in the legislation.

#### **Financial potential of municipalities:**

- In order to achieve financial resources that will match municipalities' responsibilities, legal basis for the application of the mechanism "minimum budget provision";
- Municipalities must be provided with sustainable financial sources so that they can carry out their responsibilities, and possibilities of the application of shared-taxes system must be considered by making changes to the legislation;
- Taxation mechanisms, especially property taxes from physical persons must be improved so that municipalities can make an efficient use of the existing tax sources;

- Current mechanisms of transfers from the state budget to municipalities must be improved, conditional transfers along with unconditional ones must be provided and the amount of transfers be increased considerably;
- Effective mechanisms must be developed to give credits to municipalities on favorable terms, and the establishment of various funds supporting the development of municipalities should be promoted.

#### **Administrative supervision over municipalities:**

- The ambiguities regarding the accountability of municipalities in the existing legislation must be revoked;
- Concrete limits must be established for responsibility of municipalities when they breach the requirements of accountability;
- The provisions about the mechanisms of supervision over municipalities that contradict the principles of “European Charter of Local Self-Government” must be removed from the legislation;
- The administrative supervision over municipalities must be carried out only to ensure the compliance of municipalities with laws and constitution and must not be used as a means of pressure to them.

#### **Relations between municipalities and local state executive committees:**

- The division of responsibilities between municipalities and local state bodies must be precisely done and in doing so, a special legislative act must be adopted or the existing legislation must be modified to regulate these relations.
- As one of the components of removing the overlap of responsibilities in local governance, the local executive bodies must be shut down and their respective responsibilities be transferred to municipalities.

#### **Property provision and inviolability of municipalities:**

- According to the law on “property transfer to municipal ownership”, the state must provide all the municipalities with administrative buildings in a short time;
- The authorities must finalize the documentation for the municipal property, especially for the municipal lands located in the capital;
- Flexible and effective mechanisms must be developed for the municipalities to acquire properties within the limits set by the law;
- The law on the transfer of properties to municipalities must provide for the transparency and fairness in the process of the transfer and management of properties once they are acquired by the municipalities;
- The legislative acts must regulate the transfer of properties in such a manner that the delegated properties would not be extra burden for municipalities.

#### **Municipal Associations:**

- Municipal associations must be accepted as an equal of the central government in the processes of developing state policy on local self-governance and real legal mechanisms for such a partnership must be designed;
- In order to ensure the regular consultations between central government and municipalities, a consultative body must be established on a permanent (as well as public) basis;
- Real basis must be created for national municipal associations to operate independently;
- In accordance with the European Charter of Local Self-Government, the national legislation must provide for the right of municipal associations to join international organizations;

- Municipal associations must develop their medium and long-term action plan, as well as, strategy identifying the particular dimensions of their operations so that they will become a more professional institute;
- The associations must mainstream information technologies, especially create its website, in order to contact their members virtually and in an operative manner and provide online services to municipalities;
- Associations must be held accountable before member municipalities and build their operations on the basis of transparency and accountability principles;
- Inter-municipal cooperation within each district, town or regions must be promoted and municipalities must be completely free from any administrative pressure in choosing the form of cooperation;
- The associations must continually review the municipal legislation, and present legislative initiatives to the parliament based on the conducted reviews and received feedbacks.

**Status, working conditions and benefits of elected personnel and servants of municipalities:**

- The sustainability of salary benefits to the municipal members working on a permanent basis during the period in which they serve on a permanent must be guaranteed;
- The core principles of municipal service must be reflected in the law and municipal servants be defined;
- The law must outline the hiring conditions to the municipal service and specify the time when the status of municipal servant is granted;
- The legislation must outline principles and criteria to evaluate and motivate the performance of municipal servants;
- The gaps related with the municipal service must be removed;
- The legislation must also provide for the duty of municipal servants to report on their incomes and properties;
- The legislation must also provide for the basis of legal responsibility of the municipal servants and their implementation mechanisms.

**Better qualified municipal personnel:**

- The law on “municipal service” must be improved specifying the qualifications for the specific positions at municipalities and conditions of the recruitment process;
- A training system of municipal staff must be established with improved curriculum and the accreditation of training programmes must be carried out;
- A special institute under the Academy of Public Administration with a broad profile of specializations of local self-governance in order to retrain local self-government servants and raise their qualifications;
- Re-training courses must be provided if needed. Therefore, municipal associations and relevant state authorities must develop a mechanism to accurately and constantly assess the needs;
- The Cabinet of Ministers must stipulate the standards of occupational qualifications for the municipal service. In doing so, it is possible to design a questionnaire for municipal servants, similar to the one already designed for various professions (e.g. education and health-care servants);
- Municipal associations must create a database for training and retraining local self-government staff, which will annually record those who study for or graduate from bachelor’s or master’s in local self-governance, and the number of those who are retrained in local self-governance issues and list of topics covered in the trainings during the year. when such information is missing, it get practically impossible to assess the current situation of the staff preparedness of municipalities and plan development priorities for them;
- National Strategy of retraining and enhancing the skills of municipal staff must be worked out, and regional training and education centers must be established to span municipal staff more

### **Status of Baku as a capital city and formation of the City Council:**

- Legal barriers for the establishment of a single municipality in Baku city must be removed and a special law be adopted about “status of Baku city” to regulate the complex relations around the status of Baku city;
- The Election Code must outline the terms of elections to the City Council of Baku City specifying the number of elected persons depending on the type of local self-governance and representation norms of administrative units within the territory of the capital city;
- The law must also clearly divide the responsibilities between Baku Municipality to be created and Baku City Executive Power and regulate the its relations and coordination with other state bodies;
- The law on the status of municipalities must precisely define the responsibilities of Baku City Municipal Council, status of the City Administration that will be created with the decision of the Council, structure and scope of competence of local administrative units;
- Baku Municipality must be provided with necessary funding sources to fulfill its duties and operate effectively.

### **Organization of regional administration in Azerbaijan:**

- Discussions must be launched regarding the transition to the regional administration and possibilities of adapting the existing local governance to regionalization for the purpose of more efficient local self-governance in Azerbaijan.

### **Public participation and accountability:**

- Provisions for the municipalities to be accountable and public participation must be added to the legislation;
- The provisions about the public participation and accountability in the existing legislative acts must be made more concrete and accurate and real mechanisms of their application must be developed with a clearer purpose;
- Mechanisms of penalties in case of the breach of principles of accountability and public participation must be made precise;
- The government must stimulate municipalities to operate in a transparent and accountable manner in front of the public, as well as, actively involve the public, especially women and youths in decision-making processes;
- Specific positions must be outlined in the legislation for municipalities to have a unit which will work with the public;
- An action plan must constantly be designed to address the awareness-raising of both municipalities and citizens about the public participation and accountability in local self-governance.

### **Future Perspectives**

The future perspectives of local self-governance reforms depend on the initiatives and attempts of the government, municipal associations, civil society institutes and international organizations. There are already signs of the government intending to make reforms. For example, in the 2008-2015 state programme of poverty reduction and sustainable development in the Azerbaijan Republic, increasing the financial and personnel capacity of municipalities, improving mechanisms of public control over municipalities and granting a status of municipality to big cities etc, are considered as key aspects of the reforms.

The Parliament is expected to initiate discussions over a number of issues regarding the changes to the legislation of local self-governance and transfer of responsibilities from the existing executive committees to municipalities. The recent political statements at higher levels about the importance of stronger municipalities, activities being carried out on the way to designing the law of the Azerbaijan Republic on “Baku Municipality”, increased amount of state budget transfers to municipalities in 2012 (from 3.5 million manats to 5 million manats) and other similar initiatives are the basis of hope for the development of municipalities.

European Congress of Local and Regional Authorities have declared a monitoring mission in 2012 to check the degree to which Azerbaijan has fulfilled its commitments arising from the membership to the European Charter of Local Self-Government. The NGO Alliance for Municipal Development hopes that the municipal legislation in Azerbaijan will have been improved by the time the monitoring is held.

## INTRODUCTION

The future perspectives of local self-governance reforms depend on the initiatives and attempts of the government, municipal associations, civil society institutes and international organizations.

It is already 12 years since the municipalities started to operate for the first time in Azerbaijan and around 30 pieces of legislation have been enacted to regulate the operations of municipalities during this period. Along with the laws and other normative acts (presidential decrees, decisions of Cabinet of Ministers, etc.), the European Charter of Local Self-Government has become an integral part of the legislation of the Azerbaijan Republic. This international document entered in force through the adoption of the law of 25<sup>th</sup> December, 2001 on the “approval of European Charter of Local Self-Government”, which entered into force from the 1<sup>st</sup> August 2002.

By ratifying the Charter, Azerbaijan undertook a number of commitments with regard to local self-governance. Even before the Charter was actually ratified, the commitment (local self-governance must be stipulated in the country’s legislation and possibly in the constitution) envisaged in its 2<sup>nd</sup> Article had been fulfilled. The fourth section of Azerbaijan’s constitution of 1995 (Articles 142-146) deal entirely with local self-governance and were followed by the enactment of a number of legislative acts governing the municipalities functions. Some of the other commitments were fulfilled following the Recommendation 126 (May 21, 2003) of the European Congress of Local and Regional Authorities. In accordance with the Recommendation 126, the law of 30 December, 2004 modified and adapted the notion of local self-governance to Article 3 of the European Charter and towards the end of 2006, municipalities associations were founded. Yet, a range of commitments still remain unfulfilled so far.

Various organizations have written reports and commentaries about the fulfillment of the commitments and the functioning of the local self-governance system in the country, among which the 2003 report and Recommendation 126 of the European Congress of Local and Regional Authorities are of special importance. However, following 2003, not considering come trips to Azerbaijan and statements of Congress representatives, no follow-up monitoring has been held and reports prepared by the Congress (except for the one about the 2009 municipal elections). As for the national NGOs, in 2009-2011, NGO Coalitions, including “NGO Alliance for Municipal Development” have prepared and presented to the public the reviews about the existing situation of local self-governance in Azerbaijan. “NGO Alliance for Municipal Development” is intended to continue to assess the existing situation of local self-governance on an annual basis.

This year, the Alliance has carried out the monitoring and assessment of the legislation and practice of local self-governance in the country on the background of the principles of European Charter of Local Self-Government.

The assessment was based on the principles of European Charter and the degree of the fulfillment of commitments taken by Azerbaijan, as well as, explanatory “comments” of Council of Europe’s experts to the provisions of the Charter.

Covering fundamental issues regarding the local self-governance, the monitoring report is of the following 11 chapters:

- Status and scope of competence of municipalities in Azerbaijan;
- Financial resources of local self-governments in Azerbaijan;
- Administrative supervision over municipalities;
- Relations between municipalities and executive committee bodies;
- Municipality property: property provision and protection;
- Municipal associations;
- Status, working conditions, and allowances of elected municipal councilors and municipal servants;
- Municipal personnel;
- Status of Baku as capital city and formation of elected city council;
- Regional administration in Azerbaijan;
- Public participation and accountability.

Each chapter consists of 3 sections: the first section on “*relevant papers of the Council of Europe*” deals with the commitments arising from the principles and requirements of the European Charter, recommendations and commentaries of various Council of Europe bodies. The second chapter “*Current situation in Azerbaijan*” explores the extent to which relevant issues are reflected in the legislation of Azerbaijan, level of compliance of legal provisions and mechanisms with the principles of the Charter and particular recommendations, and the major problems encountered by municipalities. The third section “*Recommendations*” of each chapter proposes specific recommendations to resolve the problems in question.

The monitoring reviewed the conceptual attitude of the government towards local self-governance, exploring the reflection of Charter’s requirements in the national legislation and the implementation mechanisms of legal provisions, and identifying those provisions of the Charter which are not covered in the national legislation. Further, it reviews the statistics about the municipalities across years and results from the survey and interviews in the regions.

The monitoring has been conducted and the report has been prepared by a group of experts of Alliance-member organizations. The authors of the monitoring report thank to Oxfam GB in Azerbaijan for their support to preparing the report.

It is our hope that this report will be useful in judging the real situation of established municipal institutions in Azerbaijan accurately, improving the municipal legislation, making public and communicating the myriad of challenges currently encountered by municipalities to relevant state bodies, launching the discourse and achieving the solution to these challenges and ultimately, strengthening the municipalities in the country.

## 1. STATUS AND SCOPE OF COMPETENCE OF MUNICIPALITIES IN AZERBAIJAN

### 1.1. Council of Europe papers about the status of municipalities

The status of municipalities is defined by the Council of Europe Charter of Local Self-Government, which envisages local self-governments as public administration institutions with responsibilities. The preamble of the Charter states that Council of Europe considers local authorities with real responsibilities that can provide an administration which is both effective and close to the citizen. **Article 3 of the Charter on the concept of local self-government gives the definition of local authorities clearly specifying their role. This provision states that “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.”** Also, the explanatory notes developed by the Council of Europe experts about the Charter shows that the meaning of responsibility to manage a substantial share of public affairs as stipulated by Article 3 of the Charter is that the functions of local authorities are not confined to the fulfillment of the orders of the upper-tier government bodies. These functions in fact denote that local authorities are part of the overall public administration and function independently of the higher tiers of the government.

The sections of the Charter specifically dealing with the responsibilities of municipalities are the following:

- 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.
- 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.
- 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.
- 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.
- 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.

These provisions mean delegating a broader scope of competence and decision-making discretion to municipalities in addressing local issues.

The appendix on “responsibilities of local authorities” of Recommendation 79 (2000) of the Council of Europe on “The financial resources of local authorities in relations to their responsibilities: a litmus test for subsidiarity” contains the following recommendations for the member states<sup>1</sup>:

- One of the main prerequisites for the implementation of the principle of subsidiarity is the establishment of local authorities with “the ability, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interest of the local population”.
- It would be appropriate for sectoral legislation to clarify, for each particular field, the precise extent of the responsibilities of central government and those of each relevant level of local government.

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<sup>1</sup> **Recommendation Full text:** <https://wcd.coe.int/wcd/ViewDoc.jsp?id=929243&Site=Congress&BackColorInternet=C3C3C3-BackColorIntranet=CACC9A&BackColorLogged=EFEA9C>

- Laws laying down the general conditions for the existence and functioning of local authorities should also include provisions on the principles governing local authorities' responsibilities. This would immediately encourage citizens to regard local self-government not merely as a matter of administrative procedure but rather as something with a very tangible impact on particularly important aspects of their everyday lives. Such laws should list the suggested responsibilities of local authorities, with information on content and application being set out in other, more specific laws.

The study of the European Committee on Local and Regional Democracy (CDLR) under Council of Europe on "local authorities competences in Europe" in 2007 states that local self-governance is an independent system. Yet, their level of independence hinges on the competence and resources local self-governments have. As per CoE's approach, if the local authorities do not possess power necessary to fulfill their competences using the resources efficiently, they will function as institutions carrying out the orders of the higher-tier authorities<sup>2</sup>.

The recommendations of Council of Europe Congress of Local and Regional Authorities to various member states propose concrete legal mechanisms about the reflection of the Charter's provisions about the local authorities' competences and status in the national legislation. For instance, Recommendation 157 (2004) on local and regional democracy in Georgia states that crucial competences of education, health-care, social security and culture are directly related with local interests and the removal of these competences from the scope of responsibilities of municipalities creates the risk of perceiving municipalities as secondary bodies<sup>3</sup>.

## 1.2. Current Situation in Azerbaijan

The status and competences of municipalities in Azerbaijan are defined through the Constitution and law on «status of municipalities». as per Article 1 of the law on «status of municipalities», local self-governance is such a system of organizing local affairs of citizens in Azerbaijan that it gives a chance to citizens to realize their discretionary right to addressing local issues independent and carry out some of the public affairs as identified by the Constitution (Article 144). Yet, this notion does not allow stipulating municipalities in the legislation either as institutions with real power or as part of the overall public administration. Such an ambiguity around the status of municipalities is reflected in the limited competences of municipalities. In real life, all of the functions (utilities, renovation of the territory, certification and registration of citizens living in municipal territories, social service provision, water supply, etc.) that are usually referred to as "natural competences" of municipalities are carried out by local state executive committees. At present, the real scope of competences of municipalities in the country is confined to maintaining the municipal roads, delivering social assistances to people not covered by the state social programs, maintaining cemeteries and organizing funerals.

Article 8.2.2 of Recommendation 126 (2003) of Council of Europe on "local and regional democracy in Azerbaijan" states that municipalities have extremely limited responsibilities in Azerbaijan and a significant portion of public affairs have not been made part of their competences in contrast to the European Charter of Local Self-Government<sup>4</sup>. Since this recommendation was passed, no change has occurred in the legislation of Azerbaijan about the increased competences of municipalities.

There is also a problem of overlap in the responsibilities of local governance in that one and the same responsibility is delegated to another state body along with municipalities. For instance, the law on «status of municipalities» envisages responsibilities for the municipalities to organize and

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<sup>2</sup> «Local authority competences in Europe». Study of the European Committee on Local and Regional Democracy (CDLR). Situation in 2007. <http://www.coe.int/document-library/default.asp?urlwcd=https://wcd.coe.int/ViewDoc.jsp?id=1377639>

<sup>3</sup> Full text of the recommendation: <https://wcd.coe.int/wcd/ViewDoc.jsp?id=976391&Site=Congress&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C>

<sup>4</sup> Full text of the recommendation: <https://wcd.coe.int/wcd/ViewDoc.jsp?id=931129&Site=Congress&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C>

maintain sanitary enterprises, collect, transport and process wastes. On the other hand, the Article 12 of the law on «Manufacturing and residential wastes» states that it is local state executive bodies who are in charge of the transportation and processing of residential wastes. The same problem exists in the field of running water supply and sewage network, which is contradictory to Article 4 of the Charter that underlines the exceptional responsibilities for the municipalities.

Lastly, relations between local self-governments and executive bodies are governed by the principles of “dominance” and “dependency”. Municipalities and representations of executive bodies are running in parallel even in small administrative territorial units, which will lead to less effective governance and create favorable conditions for the executive bodies to keep municipalities under the informal control. The existing organizational principles of public administration in Azerbaijan are the legacy of the USSR inasmuch as territorial units called “soviets” in the soviet time are just replaced by the territorial executive representations that are organized in each of the administrative territorial unit.

The absent legal mechanisms governing the relations between municipalities and local state executive bodies at times result in the breach of the right to local self-governance, which is mentioned in the Recommendation 126 (2003) of European Congress of Local and Regional Authorities. The recommendation states that there is a need to enact a separate legislative act to regulate the relations between municipalities and executive bodies. During the period since this recommendation was adopted, no changes has occurred in the said direction. The constitutional basis of local executive committees, which have more competences relative to municipalities, is Article 124 of the Constitution, which states that local executive power is fulfilled by the heads of the executive bodies. The appointment and dismissal of the heads of executive bodies and determination of the competences of local executive bodies are all decided by the President of Azerbaijan. The Regulations on “local executive power” approved through the presidential decree of June 16, 1999 define the scope of activities, organizational structure and competences of local executive bodies. As per the regulations, heads of the executive bodies carry out executive power in respective territorial units in the districts, towns and regions. There are representatives of executive bodies in the towns, settlements and villages with an attachment to the region, who are appointed by the head of the local executive office.

The regulations grant a broad scope of competences to local executive committee heads, which cover issues on socio-economic development, utilities, construction, transport, communication, agriculture, use of lands, social protection of the people, provision of rule of law, naming of streets and squares, environmental protection, etc. a portion of competences stipulates in the regulations and granted to local executive committees are also recognized superficially as competences of municipalities. The imprecise division of competences between municipalities and local executive bodies is the source of frequent conflicts, which is a serious threat to the effective administration.

### **1.3. Recommendations**

In the light of the mentioned problems related with the status and competences of municipalities in Azerbaijan, the following recommendations are proposed:

- *Legislative norms stipulating the status of municipalities as the local government bodies;*
- *Exceptional competences shall be granted to municipalities in line with the requirements of the Charter of Local Self-Government and a clear division of responsibilities shall be done between municipalities and local executive committees,*
- *Boundaries of responsibilities peculiar to municipalities and those that can be transferred to municipalities by the state bodies shall be clearly specified.*

## **2. FINANCIAL RESOURCES OF LOCAL SELF-GOVERNMENTS IN AZERBAIJAN**

### **2.1. Council of Europe papers on the formation of financial potential of municipalities**

Article 9 of the Charter of Local Self-Government is fully concerned with the financial resources of local authorities with the following provision:

- 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.
- Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
- 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.
- 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 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.
- Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
- 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.
- For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

The appendix on “responsibilities of local authorities” of Recommendation 79 (2000) of the Council of Europe on “The financial resources of local authorities in relations to their responsibilities: a litmus test for subsidiarity” summarizes the existing gaps in the local financial of member states. It also proposes some recommendations aimed at improving the system. The major problem that cuts across various countries is that the share of tax collections is very limited in the total pool of incomes and central budget transfers comprise a bigger share in the municipal budget compared to the revenues from the peculiar sources of income. The taxes delegated to municipalities are not profitable insofar as they do not generate remarkable revenues to the local budgets, there are legal barriers for municipalities to borrow, and there are not consistent criteria regarding the purpose and forms of the fiscal equalization. The Congress recommends the following to resolve these gaps:

- Municipalities shall be able to form the significant portion of their budget resources with peculiar resources of the taxes and fees. By «peculiar resources», the Congress means those financial resources that are formed through the independent decisions of local self-governments and those over which municipalities have a discretionary power. In the case of taxes, municipalities shall be independent in determining the tax rate on condition that they consider the tax burden of their citizens.

- Exclusive taxes that will be calculated and collected by municipalities shall be identified for municipalities.
- Municipalities shall be assigned tax sources that are profitable and will bring high profits.
- Shared-taxes shall be applied to be collected by public bodies and transferred to the local budgets.
- Central government transfers shall not target at limiting the local autonomy and accurate and consistent criteria shall be developed for the purposes of fiscal equalization.
- Both vertical (between central or regional governments and municipalities) and horizontal (among municipalities) fiscal equalization tools shall be provided.

## 2.2. Current situation in Azerbaijan

Municipalities have considerably weak financial potential in Azerbaijan with a total of 28.9 million manats of municipal incomes in 2010<sup>5</sup>. The last year's per capita incomes of municipalities made up 3.2 manats, affirming that municipalities in Azerbaijan do not possess adequate funds to carry out even their limited functions. The current share of total incomes of municipalities within the consolidated state budget of Azerbaijan is even less than 0.2 per cent.

The existing legislation – Tax Code, laws on “local (municipal) taxes and fees”, “financial basis of municipalities”, “budget system” - establish a number of income sources for the municipalities in Azerbaijan. Yet, in practice a great majority of these income sources do not help to form sustainable and high revenue sources.

The statistical overview of the financial situation of municipalities demonstrates that despite the fact that over ten revenue sources are specified in the legislation, only two of them play a significant role in the local budgets and of the total budget funds of municipalities in 2010, 7.1 million manats or 24.5 per cent came from land taxes. When contrasted to the amount of lands municipalities possess, the inflows from this source of revenue are markedly limited. The official statistics state that there are 1.7 million hectares of land under the private ownership, including 1.44 million hectares with agriculture orientation and 260 thousand hectares of yard. It means that on average land taxes are 4 manats per hectare. The tax rate of land has not changed over 10 years.

Of the total budget incomes of municipalities in 2010, 12.2 million manats or 42.5% came from the lease and sales of municipal lands. Despite the large amount of agricultural lands under the municipal ownership, they cannot act as significant sources of revenues for the local budget. As per the land legislation, lands fit for agriculture purposes cannot be privatized. They can be leased out to physical and legal persons through certain fees. There were 1.13 hectares under the municipal ownership with agriculture orientation in 2010 and municipalities were able to make a total income of 3.9 million manats or 3.4 manats per hectare<sup>6</sup>.

The property taxes made up 2.7 million manats of income or 9.3 per cent of the local budget revenues in 2010. About 85 per cent of the property tax inflows are from 5 big towns – Baku, Ganja, Sumgayit, Mingachevir and Shirvan.

The other five sources of income – profit taxes of municipal enterprises, mining taxes from local construction materials, advertisement duties, fees from resorts and hotels, and parking fees – contributed to the local budget revenues by 4.5 per cent or 1.3 million manats.

The state budget transfer to municipalities are negligible too insofar as they comprised 13.3 per cent of the overall municipal revenues in 2010. The “dotasiya”, which is a kind of unconditional transfer, amounted to 3.8 million manats or 2.2 thousand manats per municipality in 2010. However, the problem is not only about the small amount of transfers. The distribution mechanisms of the unconditional transfers remain unimproved inasmuch as the criteria of the distribution of transfers among municipalities and how the needs of municipalities for financial resources are calculated are not clear. In accordance with the law on “budget system”, the number of people residing in the territory of a municipality is considered upon calculating the sum of unconditional transfer for that municipality. Nevertheless, the studies show that this principle is not followed in practice. For example, in 2010 not

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<sup>5</sup> Statistical Bulletin on the implementation of municipal budgets. January-December 2010. SSC, Baku, 2011. Page. 5

<sup>6</sup> Statistical Bulletin on the implementation of municipal budgets. January-December 2011

conditional transfers were granted to the municipality in Naftalan town, and the unconditional transfers in the amount of 6 cents per person were given to the municipality in Ganja town. While the per capita sum of the unconditional transfers in Sumgayit town made up 6 cents, it was 3-4 cents for around 30 districts. The sources of extreme differences in the amounts of transfers to some districts are still unknown. For instance, there live 570 thousand people in six towns that constitute Shaki-Zagata economic region and a total unconditional transfer of 257 thousand manats (or 0.5 manats per capita) was apportioned to the local budgets in the region, while Shamkir district with a total population of 193 thousand people, which is twice 2.5 times as small as the Shaki-Zagatala region received 477 thousand manats of unconditional transfers (2.5 manats per person). There are no criteria to consider the financial condition of municipalities and level of mobilization of internal financial resources by different municipalities upon calculating the amount of unconditional transfers and distributing them across individual municipalities.

There is no legislation necessary for the conditional transfers to municipalities. Also, the legislation does not specify clear guidelines and criteria for the spending directions of transfers to municipalities. The law on “budget system” states that municipalities shall be entitled to conditional transfers from the state budget to resolve local issues. Article 32.2.2 of this law points out that when municipalities cannot afford to finance local socio-economic development programmes from their local budgets unconditional and conditional transfers shall be apportioned.

Despite the realistic needs the municipalities have, there are not effective mechanisms ensuring the access of municipalities to credits. Because of this, the financial condition of municipalities gets even weaker in Azerbaijan. Even those countries with the same level of transition as Azerbaijan have developed successful practices of giving credits to municipalities. In many countries, the governments create municipality development funds or banks to simplify the access of municipalities to financial markets.

Credits are important for the development of local infrastructure and more effective management of municipalities. They are also useful enabling municipalities to work with financial tools and create necessary staff and incite collaboration with the private sector. That is why borrowing has been one of the key aspects of decentralization reforms in a number of world countries, enabling municipalities to be entitled to borrowing just like other government bodies.

For the time being, the lacking access of municipalities to credits is attributable to the weak financial potential of municipalities in Azerbaijan insofar as municipalities are not capable of repaying and their existing budgets are not enough to cover their existing expenditures, as a result of which financial institutions are reluctant to give credits to municipalities. Moreover, municipalities are not commercial entities and it is impossible for them to take credits under commercial terms. There must be mechanisms to facilitate the granting of credits to municipalities under favorable conditions because these credits are aimed at developing public services.

The weaker financial potential of municipalities in Azerbaijan was reflected in Recommendation 126 of European Congress of Local and Regional Authorities, which states that in order to formulate a significant part of the financial resources of municipalities with taxes, municipalities competences in collecting local taxes must be increased, municipalities must be assigned profitable tax sources and be granted full discretion over spending the local budget resources and transfers from the state budget. The congress holds that clear, objective and precise mechanisms need to be developed so that state budget transfers can be distributed among municipalities in a balanced manner. During the time since this recommendation was adopted, no change has happened to strengthen the financial capacity of municipalities in the country.

### **2.3. Recommendations**

Considering the problems related with the weak financial capacity of municipalities in Azerbaijan, the following are recommended:

- *Legal basis shall be established so as to apply the mechanism of “minimum budget provision” with the final aim of forming the financial resources of municipalities that match their competences;*

- *Municipalities shall be delegated sustainable financial sources to carry out their competences and opportunities shall be sought to apply tax-sharing by making changes to the law;*
- *Tax-collection mechanisms, especially those of property taxes from physical persons shall be improved for municipalities to make an effective use of the existing sources of taxes;*
- *Existing mechanisms of state budget transfers shall be improved, conditional transfers along with unconditional ones shall be provided to municipalities and amount of transfers shall be increased considerably too;*
- *Appropriate mechanisms shall be developed to give credits to municipalities under favorable conditions and establishment of various financial funds supporting municipalities' development shall be promoted.*

### **3. ADMINISTRATIVE SUPERVISION OVER MUNICIPALITIES**

#### **3.1. Council of Europe's papers on administrative supervision over local authorities**

In European Charter of Local Self-government and other documents of Council of Europe, the primary purpose of administrative supervision over municipalities is defined to “ensure the compliance of municipalities with laws and constitution”. CoE’s recommendations to individual states emphasize the compliance with Article 8.3 of the Charter.

Article 8 of the Charter of Local Self-Government on Administrative supervision of local authorities’ activities provides the following:

- 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.
- 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.
- 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.

Council of Europe Committee of Ministers’ Recommendation R(98) 12 to member states on administrative supervision of local authorities’ action (adopted at session 641 of Committee of Ministers on September 18, 1998) recommends that member states carry out the following appropriate activities:

- Extend the application of the principles enshrined in Article 8 of the Charter to all forms of supervision of local authorities' action;
- Recognize the essential role of political supervision by citizens and to foster the implementation of this supervision, through, inter alia, the use of the instruments of direct democracy considered appropriate;
- to strengthen the transparency of local authorities' action and to ensure, in general, the public nature of decisions which engender financial costs to be borne by the community, as well as the real possibility for citizens and legal persons concerned to have access to these decisions in conformity with the procedures established according to the law;
- In accordance with Article 7, paragraph 1, of the Charter, to allow administrative sanctions concerning local authorities' representatives (suspension or dismissal of local elected representatives and dissolution of local bodies) only exceptionally, to accompany their use with the appropriate guarantees, in order to ensure their compatibility with the free exercise of local electoral mandates, and to give preference to procedures where the supervisory authority, or a named ad hoc authority, intervenes in

the place of the authority at fault, thus reducing cases where administrative sanctions could be adopted against the latter;

- Provide procedures that local bodies can themselves initiate for solving their internal conflicts, and envisage the intervention of the supervisory administrative authorities only when these procedures achieve no result;

The governments of the states to which this document is addressed are recommended to carry out legislative reforms if necessary in order to provide the consistency between the supervision systems and division of initiatives and achieve more efficient supervision systems.

### **3.2. Current situation in Azerbaijan**

The municipal legislation in Azerbaijan enshrines administrative supervision, along with the public supervision, of the municipalities' activities. This supervision is governed by the law on "administrative supervision of municipalities' activities", which states that the purpose of administrative supervision of municipalities is to guarantee the compliance of municipalities and their officials with the constitution and normative-legal acts in the country. Administrative supervision is essentially under the state control and carried out by the Center of Work With municipalities under Ministry of Justice, which prepares and submits annual reports to the parliament.

Article 4 of the law on "administrative supervision of municipalities' activities" (adopted *13 May 2003, Number 454*) specifies the terms of administrative supervision and at the same time proposes some conditions to organize the supervision in an efficient manner. For example, Article 4, paragraph 4 states that the administrative supervision cannot limit the right of municipalities to address local issues independently within the limits of the law. Also, in accordance with Article 4, paragraph 5 of the law, the intrusion into municipalities' activities, upon carrying out administrative supervision, shall be in line with the purposes as specified in the law. No doubt that these principles are important to build a supervision system that can ensure the efficient municipal governance.

However, unfortunately, Article 5 of the law that outlines the criteria for the implementation of administrative supervision paves the groundwork for the violation of these principles in practice in that it considers any requests of physical or legal entities who claim that a municipality has caused damage to them. It is contradictory to the purpose of administrative supervision carried out by the Ministry of Justice Center for work with Municipalities and creates basis for unnecessary intrusions into the municipalities' activities. Actually, physical or legal entities, as well as, the state bodies that claim that a municipality has caused damage to them have the right to go directly to the court.

Some state bodies have been known to propose even stiffer administrative supervision of municipalities by state government bodies. For example, Ministry of Justice has addressed to the Parliament to get necessary funding in order to establish and carry out the financial and budget expertise of municipalities. The Ministry has proposed changes to the legislation, which is inconsistent with the legislative acts governing the activities of Accounting Chamber. In accordance with Article 2 of the law on "Accounting Chamber", the supreme auditing body in the country can carry out supervision over the spending of state budget transfers by municipalities for the pre-defined purposes. If the wrongdoing with criminal elements is uncovered during the supervision, the Chamber has the authority to send over the materials to the Chief Prosecutor's Office. As per Article 16 of the law, Accounting Chamber is to carry out the financial and budget expertise of municipalities upon the request from Ministry of Justice, prepare a report and if needed, follow up with an audit. Obviously, if this initiative gets implemented, there will be one more state body authorized to carry out financial and budget supervision of municipalities.

The changes made to the constitution through the 18<sup>th</sup> March 2009 referendums presuppose the reporting of municipalities before the Parliament. The purpose of these changes is not clear and therefore, many experts consider them as contrary to Article 8 of the Charter of Local Self-Government. Not surprisingly, European Congress of Local and Regional Authorities strictly

objected to the proposition of these changes for the referendum. Later – 5<sup>th</sup> March 2010 – a law was adopted on the changes and additions to some legislative acts of the Azerbaijan Republic in relation to the application of Referendum Act of the Azerbaijan Republic on “changes and additions to the Constitution of the Azerbaijan Republic” that was enacted as a result of the referendum on 18<sup>th</sup> March 2009. With this law, a new article 52.2 on “Reporting of Municipalities” was added to the law on the “status of municipalities”, according to which, municipalities are to report about the following activities of theirs to the Parliament:

- 1) The implementation of additional competences assigned to municipalities by the legislative power in accordance with Article 144, paragraph 2, of the Constitution;
- 2) The use of state budget funds that are transferred to local budgets in the events as specified by the law.

Even with all of these, things still remain unclear about the purpose of the reporting of municipalities before the parliament.

One of the critical issues regarding the reporting of municipalities is that they are required to submit reports which are not stipulated in the law. Municipalities are to submit reports to the Ministry of Justice, Ministry of Taxes, State Social Protection Fund, and State Statistics Committee and they already do so. However, local executive committees ask for the reports from the municipalities about the turnover of lands on a monthly basis and their financial situation on a bi-annual basis, which are totally against the legislation and serve to limit municipalities’ autonomy.

It is important to note that «2008-2015 State Programme of Poverty Reduction and Sustainable Development in the Azerbaijan Republic contains better mechanisms of public and state supervision of municipalities’ financial and operational activities. However, the programme does not specify what these better mechanisms are. Under the said programme, civil society will be strengthened and NGOs will be supported so that communities take part more in addressing local problems and community-based development is nurtured.

### **3. 3. Recommendations**

Given the exiting situation of the administrative supervision of municipalities in Azerbaijan, the following are recommended for the implementation:

- *Uncertainties about the reporting of municipalities in the legislation shall be eradicated;*
- *The limits of the responsibility of municipalities for breaking the rules of reporting shall be precisely specified;*
- *Exiting provisions about administrative supervision of municipalities that contrast with the principles of the Charter shall be removed from the legislation;*
- *Administrative supervision of municipalities shall be carried out only for the purpose of ensuring their compliance with the laws and constitution and shall not be used as further means of pressure over them.*

## **4. RELATIONS BETWEEN MUNICIPALITIES AND EXECUTIVE COMMITTEE BODIES**

### **3.1. Council of Europe papers about the relations between local state bodies and local self-governments**

As earlier mentioned (Section 1), Article 4 of the Charter of Local Self-Government outlines some requirements regarding the competences of local authorities, underlining the exclusive responsibilities for municipalities and importance of considering efficiency and economies of scale upon transferring responsibilities from one tier of government to another. Further, it emphasizes the following:

- 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.

- 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.

Recommendation 126 of the Congress of Local and Regional Authorities on the “local and regional democracy in Azerbaijan” states that the gaps in the relations between municipalities and local state bodies, which are described in Article 8.1.2 of the Recommendation and the lack of legislation governing their relations lead to the breach of right to local self-governance in practice.

The Congress has recommendations for the authorities in Azerbaijan to adopt a law clearly specifying the regulating principles for relations between these two bodies in the fields where they are to work in parallel.

## **4.2. Current situation in Azerbaijan**

Since 1999 when municipalities were first established in Azerbaijan, the local governance has been implemented by two different local bodies – local executive powers (committees) and municipalities.

The basis of local executive powers is enshrined in the Constitution (Article 124), which states that local governance is implemented by heads of local executive powers who are appointed and fired and whose responsibilities are set directly by the president. Approved with the presidential decree of 16 June, 1999, the legislation on “local executive powers (committees)” provides for the scope of competence, as well as, the organizational structure and responsibilities of local executive bodies. As per this law, heads of executive bodies are in charge of implementing executive governance within the appropriate boundaries of administrative territorial units in regions, towns and urban regions. In the towns with an attachment to the region, in settlements and in villages, there are representations of the executive power bodies, which are headed by those who are appointed by the head of the corresponding executive committee.

This law gives broad competences to local executive powers. Yet, some of the competences clearly enshrined in the legislation as pertaining to the local executive powers are also recognized, on the surface, as responsibilities of municipalities too. The unclear division of responsibilities between municipalities and local executive powers, as well as, the incomplete and non-exclusive responsibilities for the municipalities very often result in conflicts, where it is basically municipalities whose rights are violated as a rule because as mentioned above the relations between municipalities and local executive bodies are governed by the principles of «dominance» and «dependency».

On the other hand, there is an overlap in the competences insofar as the same responsibilities are granted to other state bodies along with the municipalities by the legislation. For example, the law on «status of municipalities» identifies organization and maintenance of sanitary enterprises, waste collection, transportation and processing as responsibilities of municipalities, whereas the law on «residential and manufacturing waste» (Article 12) and Article 6 on «Guidelines of cleaning the residential areas in accordance with sanitary, hygienic and ecological norms, and temporary preservation, transportation and rendering harmless of residential wastes» approved through Cabinet of Ministers’ Decree 74 identify the transportation and processing of the residential wastes as the responsibility of local executive powers. The same problem exists in the organization of water supply and sewer network.

There are not any specific legislative acts to regulate the relations between municipalities and state government bodies in Azerbaijan, which sometimes causes the breach of the right to local self-governance. This point is raised in Recommendation 126 of the CoE Congress of Local and Regional Authorities. However, the constitution and laws of the municipalities define municipalities as completely autonomous and bans any intrusion into the municipalities by local executive powers. It also remains another fact that there is an austere hierarchical framework of relations between these two tiers of government with different statuses, which is basically in favor of local executive bodies and appears to be another serious hindrance barrier for the development of municipalities.

Studies of civil society institutes show that local executive powers intrude into the municipalities in different manners. Although these intrusions sometimes arise from the legislation (e.g. legal norms about the sale or hire of municipal lands through auctions organized by State Land and Mapping

Committee), in most cases they are of informal nature. Intrusions into the discretionary decision-making of municipalities about their budget resources are also common. As per the laws in force, local budget resources are to be directly spent on the needs of citizens residing in the territory of a municipality. However, the studies suggest that local executive powers regularly ask the municipalities informally for funds to do some renovation work in the territory of a greater region, while expenses related with such kind of works are supposed to be covered from the state budget. In many cases, local executive powers also interfere with the financial assistance transferred from the state budget to municipal budgets allocated and it happens when municipalities have multiple socio-economic problems waiting to be resolved in their own territories.

#### **4.3. Recommendations**

1. *Competences shall be precisely divided between municipalities and local executive powers. In doing so, either a special legal act shall be adopted to regulate the relations or the existing legislation shall be modified accordingly.*
2. *As one of the major directions of removing the overlapping competences, local executive powers shall be cancelled, and their powers shall be delegated to municipalities.*

## **5. MUNICIPALITY PROPERTY: PROPERTY PROVISION AND PROTECTION**

### **5.1. Council of Europe papers about the municipal property**

Recommendation 132 (2003) on municipal property in the light of the principles of the European Charter of Local Self-Government recommends valuable thoughts, such as below, to the CoE member states about the effective implementation of the Charter in relation to the municipal properties:

- The constitutions of member states and/or national legislation must provide the local authorities with sufficient guarantees with respect to municipal property in the exercise of their functions (if not provided yet);
- the local authorities shall possess, within the limits of the law, the possibility of acquiring and using municipal assets;
- They confer municipal ownership rights, preferably, and without affecting the right to have recourse to forms of direct democracy, on the local authority's representative body and/or executive body, which must act under the authority of the local assembly;
- The local authorities with the right to own municipal property can fully exercise this right, in accordance with the law, and that any exceptions are provided for by law, serve a legitimate purpose, are necessary and comply with the principle of local self-government
- The possibility, where provided for by law, for municipal assets to be disposed of, constitute tangible security or be seized, must not have any detrimental effect on the general existence of municipal property and local self-government;
- The administrative supervision of municipal property, exercised in accordance with the law, is in principle only carried out to check legality and, in exceptional cases, expediency, while respecting the criterion of proportionality;
- In keeping with the rules of democracy, and in accordance with the law, there is genuine management transparency and openness in municipal property matters;
- In principle, the local authorities are able to use all charges for the use of municipal assets as their own resources;
- The taxation of municipal assets, where this exists, is not excessive and supports the actual existence of municipal property and local self-government;

- The transfer of new powers by the state to the local authorities is accompanied, as far as possible and in accordance with the law, by not only the transfer of financial resources but also the transfer of assets – at least the assets allocated to the public services transferred, that are necessary for the exercise of the new powers;
- The state does not transfer to the local authorities the assets that constitute a burden, likely to put unnecessary strain on their budgets rather than useful resources required by these authorities to perform their functions.

Recommendation 126 (2003) on “local and regional democracy in Azerbaijan” mentions about no properties of municipalities (especially in Baku) and incomplete process of transferring powers from state bodies to municipalities in spite of the presidential decree and thus recommends the following to the government of Azerbaijan:

- In accordance with the presidential decree and laws, the process of transferring properties to municipalities shall be completed;
- Accurate, objective and precise criteria shall be developed to ensure the balanced distribution of state funds across municipalities in the near future.

## 5.2. Current situation in Azerbaijan

Issues regarding the acquisition and use of and discretion over municipal property are enshrined in the Constitution (*13<sup>th</sup> Article*), Law on “status of municipalities” (*2 July 1999*), law on “transfer of properties to municipalities” (*7 December 1999*) and other normative acts. According to the law on “transfer of properties to municipalities”, municipalities are provided with land and other types of property.

In the transfer of lands to municipalities, the boundaries of municipal territories is regulated by the law on “municipalities territories and lands” (*7 December 1999*) and the law on “Land reforms”. Article 3 of the law on “transfer of properties to municipalities” defines state properties transferred to municipalities and properties acquired otherwise, properties given by physical and legal persons, international organization and funds as the voluntary material support, properties that are without owners and transferred to municipalities and properties that are willed to municipalities as sources of generating municipal property.

Article 4 of the law writes that state-owned utility, social and cultural premises that are necessary for municipalities to carry out their responsibilities, other social and cultural premises, including those used by people are transferred to municipalities in the manner defined by law. Moreover, the same Article underlines municipalities shall be provided with necessary administrative buildings, rooms and equipment.

In line with Article 4, paragraph 5 of the law on “transfer of properties to municipalities”, with the presidential decree of 2001, the regulations on “guidelines and durations of the transfer of state properties to municipalities”, according to which State Committee on Properties Affairs is in charge of transferring the properties to municipalities. The regulations include procedures that need to be followed upon transferring state properties, which have been identified by the Cabinet of Ministers, to municipalities. The decree instructed Cabinet of Ministers and local executive committees to provide municipalities with necessary administrative buildings, rooms and equipment so that municipalities can carry out their activities properly.

With Decision 106 (8 July, 2002) of Cabinet of Ministers, the list of properties to be transferred to municipalities ended up having names of 96 properties, 58 of which are administrative buildings or rooms of administrative buildings, 16 parks, 9 fountains, 4 gardens, 3 hotels, 3 monuments, 1 boulevard, 1 kindergarten, and 1 square. Eighty four properties on the list have already been transferred to municipalities. It is worth noting that 8 out of 11 properties that have been transferred to Mingachevir municipality, to which the most properties have been delegated, are fountains. Through the same decree above, a total of 51 municipalities in the entire country have been provided with administrative buildings, which means that the rest 6 administrative buildings are not transferred yet, while Article 4 of the law on “transfer of properties to municipalities” states that municipalities need to be provided with administrative buildings, rooms and equipment.

The studies reveal that still a great majority of municipalities, especially rural ones do not have offices yet and many of them temporarily share the same buildings as office space with the representation of the local executive committee. In practice, there are even municipalities sharing the same room with the representation of the local executive committee. Despite the fact that some municipalities solved their problem of administrative buildings in the aftermath of the merger of municipalities, a number of municipalities still do not have the one.

Uncertainties evolving around the borders of municipal and state properties create problems for municipalities to be exclusive owner of the properties insofar as these owners of properties interfere in each other's lands, which is more common in the case of Baku and suburb municipalities. There was also a case when two municipalities issued a decision over the same territory.

As a result of the changes that were made to the law on "Management of Municipal Lands" in accordance with the presidential decree 2523 (23<sup>rd</sup> November 2007), municipalities are not allowed to sell municipal lands on their own. According to the changes made to Article 9.1 of the law, the ownership, use and hire of municipal lands can be obtained only through auctions or competitions, which are actually organized in partnership with the local executive bodies. It leads to the concentration of interests of various local executive bodies over the lands of municipalities and dependency of municipalities on them. Accordingly, municipalities lose their authority to make independent decisions about their properties.

Another major problem on the way of municipalities becoming property owners is that they do not have enough financial resources inasmuch as they cannot manage their properties normally without necessary financial resources. Even some municipalities appear to be uninterested in obtaining properties just because of lacking funds.

### **5.3. Recommendations**

Considering the challenges with the provision and protection of municipalities' properties in Azerbaijan, below are some recommendations:

- *In line with the law of "transfer of properties to municipalities", all municipalities shall be provided by the state with administrative buildings in a short time;*
- *Relevant authorities shall finalize the granting of documents verifying the property right of municipalities, especially those in the capital;*
- *Effective and flexible mechanisms shall be worked out, within the limits of law, in order for the municipalities to be able to acquire properties;*
- *The legislation about the transfer of properties to municipalities shall provide for transparency and fairness both before and after the properties are acquired;*
- *The legislation about the transfer of properties to municipalities shall regulate the transfer of properties in such a way that the properties do not become additional burden for municipalities.*

## **6. MUNICIPAL ASSOCIATIONS**

### **6.1. Council of Europe's papers on municipal associations**

Article 10 of the Charter of Local Self-Government is titled "Local authorities' right to associate". The first paragraph of the article states that 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. The second paragraph enshrines the entitlement of local authorities in CoE member states to belong to an association for the protection and promotion of their common interests and requires that the entitlement of local authorities to belong to an international association of local authorities shall be recognized in each state. Lastly, the third paragraph of the same article states that 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.

Article 7 of Recommendation 171 (2005) on “Consultation of Local Authorities” that European Congress of Local and Regional Authorities adopted in 2005 states that the government shall consult with local authorities in planning and deciding about issues that directly concern local authorities. Article 8 of the Recommendation states that the institutional dialogues that the national and regional associations of local authorities build with the government in the defense of overall interests are vital for such consultations. Article 19 of the paper contains specific recommendations for the national governments about municipal associations. The position of Congress is that central government should officially recognize local authorities as its partners, decide with representatives of national associations to found a body for permanent consultations, support the development of national and regional local government associations, and continuously involve them in the discussions of vital issues such as responsibilities and financial resources of local authorities<sup>7</sup>.

Provisions regarding the municipal associations are also reflected in Recommendation 221 (2007) on “The institutional framework of inter-municipal co-operation” of the Congress, stating that in countries where municipalities are small and scattered and, regionalization is weak, the effective organization of local public services calls for the inter-municipal co-operation and local government association and associations represent a tool for such a cooperation<sup>8</sup>.

In its recommendations to various states, the Congress gives advice for stronger municipal associations. For example, Recommendation 226 (2007) on «local and regional democracy in Croatia» states that Croatian government must assign necessary funds to build the administrative and professional capacity of local government associations operational at the local and regional levels<sup>9</sup>.

## 6.2. Current Situation in Azerbaijan

The effective organization of municipal associations is one of the preconditions of the formation of effective local government institute. Such associations must represent municipalities’ interests before the central government rather than be the platform of inter-municipal cooperation. Therefore, in international practice, the effectiveness of municipal associations tends to be more gauged on the basis of the extent that they represent the interests of their members.

Three municipal associations, representing village, town and city, were established in Azerbaijan in 2006. About 81.5 per cent (up to 1400) village, 13.9 per cent (around 240), and the rest are members of the associations. Although it is already five years since they were established, no initiatives have been taken to further develop municipalities and thus decentralize the administration system. From its inception up to now, there have been doubts about the operation of the associations in accordance with their mandate and the necessary capacity (especially staff) they have. In international practice, municipal associations are used as platforms to exchange and promote best practices of running municipalities across all municipalities, to facilitate the communication of municipalities with each other and benefit mutually from each other’s resources, defend their members’ interests vis-à-vis the higher tiers of government, take part in drafting legislations that impact municipalities interests, conduct monitoring of challenges municipalities encounter, and lastly, train and retrain necessary personnel for municipalities. Municipal associations in Azerbaijan carry out none of these important functions.

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<sup>7</sup> For the full text of the recommendation see the link:

<https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=REC%282005%29171&Language=lanRussian&Ver=original&Site=Congress&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C>

<sup>8</sup> For the full text of the recommendation see the link:

<https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=REC%282007%29221&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>

<sup>9</sup> For the full text of the recommendation see the link.

<https://wcd.coe.int/wcd/ViewDoc.jsp?id=1624515&Site=Congress&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C>

The legal basis of municipal associations in Azerbaijan is the law on “status of municipalities“, which in its Article 10 states that municipalities can establish associations to protect their rights and interests more effectively. Compared with the Council of Europe’s relevant standards and legislation of associations in other countries, there are some shortcomings in the legal and normative regulation of municipal associations in Azerbaijan. For example, Article 10.2 of the Charter requires the entitlement of municipalities to join similar international associations to be recognized, while there is no such provision in Azerbaijan’s legislation.

Article 7 of Recommendation 171 of “Consultations of Local Authorities” underlines the involvement of local authorities in planning and deciding on issues that directly concern local authorities, whereas Azerbaijan’s legislation misses such a provision about the consultations with municipalities. Only in Article 13 of the law on “status of municipalities” states that identification and change of municipal territories, including the identification of the boundaries of municipal territories upon creating, merging, splitting, and reorganizing, or cancelling the municipalities are regulated by the legislation through the consideration of socio-economic condition, historical and other economic peculiarities, and the views of peoples living in the that area. Obviously, even in making significant decisions such as the change of boundaries, the legislation does not consider the participation of municipalities working in that area.

Finally, the associations in Azerbaijan do not have a professionally developed strategic plan, while such a plan is a sign of the fact that an entity is not working on an ad-hoc basis and has a clear vision into the future and mechanisms of efficient use of resources at its discretion. Further, municipal associations do not have internet webpage and periodical publications in Azerbaijan, whereas without such tools of communication it is impossible for the associations to regularly provide their members with necessary information and contact each other.

### 6.3. Recommendations

- *Municipal associations shall be recognized as an equal partner of the central government in defining the policy about local self-governance and real legal framework shall be prepared to facilitate such a partnership;*
- *A permanent (also) consultative body between the central government and municipalities shall be established in order to sustain consultations between them;*
- *Real guarantees shall be established for the independent operation of associations;*
- *In line with the European Charter of Local Self-Government, national legislation shall recognize the entitlement of municipalities to belong to international associations;*
- *Municipal associations shall develop their short and long-term strategic plans with clear directions of activities and professional structure;*
- *Associations shall mainstream information and communication technologies into their activities, especially create website and provide online legal services in order to contact with their members virtually and effectively and increase awareness about their activities;*
- *Associations shall be report before the member municipalities and shall do in a transparent and accountable manner;*
- *Inter-municipal cooperation shall be promoted in each region, district and specific areas and municipalities shall be independent and free from any administrative pressure to choose ways of cooperation;*
- *Associations shall continually review the legislation and present to the parliament any initiative of legislation based on the findings from the analyses or feedbacks.*

## **7. STATUS, WORKING CONDITIONS, AND ALLOWANCES OF ELECTED MUNICIPAL COUNCILORS AND MUNICIPAL SERVANTS**

### **7.1. Council of Europe’s papers on the status of municipal councilors and servants**

European Charter of Local Self-Government contains certain provisions about the status and working conditions of municipal councilors and servants. Article 6, paragraph 2 of the Charter states that 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. At the same time, Article 7 of the Charter is titled “**Conditions under which responsibilities at local level are exercised**” and it states that 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. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

Although European Congress of Local and Regional Authorities does not have a specific recommendation on the status, working conditions and remuneration, it made its position on these issues clear in various recommendation papers that it provided to individual states. For example, the one (120) on «local and regional democracy in Poland» (2002) states that proper working conditions, remuneration and promotion perspectives shall be provided in local authorities<sup>10</sup>.

### **7.2. Current situation in Azerbaijan**

The activities of municipal employees and elected representatives are governed by 3 different laws.

As per the law on “status of municipalities”, the state shall guarantee the effective and uninterrupted operations, rights, honor and self-esteem of municipal employees. Also, the legislation shall defined social warranties for different positions of municipal employees.

According to the law on “status of municipalities”, elected representatives of municipalities have entitlements to address to local executive committees about local issues, lead elected posts at municipalities, take part in municipality’s meetings and make necessary decisions. The law also enshrines the training and retraining of municipal employees at state education premises on regular basis. While in post, a municipal employee working with a labor contract cannot be fired from his or her post or transferred to a post with a lower pay without having prior permission from the municipality. The major workplace of an elected representative that gets a pay from the municipality is considered to be the municipality. Employees without pays from the municipality can continue to carry out his or her responsibilities at the municipalities and at the same time work in production or service industries, as well as engage in his or her academic, training and creative activities. While at the municipality’s meetings or at the meetings of the permanent commissions of the municipality, a municipal employee is free from carrying out his or her duties at the workplace.

The law on “municipal service” governs the status and activities of people – municipal servants – who hold designation and pay-based positions at a municipality, stating that municipal servants include heads, deputy heads of different departments, experts and inceptors. The basic function of municipal servants is to implement decisions made by the municipality. As per the law, necessary conditions shall be created for the municipal servants to obtain necessary information from relevant bodies and organizations, special training and retraining courses shall be provide so that municipal servants can fulfill their functions properly.

Social welfare protection of municipal servants and other paid-staff members is provided through working hours, holidays, pensions and other benefits (including pays). However according to the law

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<sup>10</sup> For the full text of the recommendation see the link:

<https://wcd.coe.int/wcd/ViewDoc.jsp?id=942731&Site=Congress&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C>

on “municipal service”, they are additionally given other compensations and payments within the financial competence of municipalities. Pays of municipal servants are covered from the municipal budget and calculated on the basis of work schedule approved by the municipality.

The above mentioned is the brief summary of the status of municipal representatives and servants as enshrined in the legislation, the review of which proves leads to say that there are even more problems with regard to status of municipal servants than with regard to the status of municipal employees. As for the municipal representatives, in the context of current approaches and responsibilities of municipalities, the major problem is the inadequate financial security of municipalities, in the absence of which, problems will inevitable emerge in social security issues (e.g. calculation of pension, etc.). A greater number of gaps are noticed in the regulation of the status of municipal servants.

The existing status and responsibilities of municipalities in Azerbaijan significantly have considerably impacted the legislation of municipal service. Missing necessary legal tools to promote the recognition of municipalities as local government bodies and the fact that municipalities are not regarded as part of the overall public administration system have led to the regulation of status of municipal servants in a different way from that of status of public servants, whereas in developed countries with local self-governance system there is the same approach towards the category of “servant” as municipal service is established and functions in the public administration domain and local governance is part of the overall administration system. This feature of municipal service makes it similar to the public service. Municipal and public governance are part of the public administration and both stem from the same source, which is people. As public and municipal servants work in the public domain fulfilling state and municipal functions, the status of municipal servants, like that of public servants, need to be clearly regulated. Hence, the law of “municipal service” is far from perfect insofar as this law does not specify major principles of municipal services, which would significantly help to identify much more clearly the basis of organization and implementation of municipal services.

No classification of municipal servants, especially that of high-rank people at municipalities in the law of “municipal service” and no definition of who are ‘high-rank’ officials is still legal gaps too.

The law specifies conditions neither for the recruitment into municipal service nor for obtaining the status of municipal servant. It remains unclear as to what the qualifications are for a person in municipal service. For example, things regarding whether the recruitment of relatives of municipal officials into municipal service is banned and whether courts’ decisions are considered still remain unclear. The tools of recruitment – whether through competition or other means - remain vague too and therefore the law does not specify other details or conditions of the competition into municipal service. The law fails to consider an important aspect – probation period of employees – in the public administration system and proposes a rather strange approach to the recruitment process stating in its Article 5 that heads of the executive structures which are established to carry out service delivery to local people and socio-economic programmes are assigned by the chair through the decision of municipality, and the rest employees are directly appointed by the chair. Thus, this or another ambiguous points about the recruitment into municipal legislation in the law do not help to create legal basis for the municipalities to build professional personnel and in the absence of particular criteria, it is legally easy for nonprofessional and accidental people to be recruited into municipal service.

Just as the law on “municipal services” does not provide any legal basis regarding the procedures of recruitment, it does not contain clear regulations about the dismissal from municipal service. The law fails to consider that a municipal servant works in the public domain, where the hiring and dismissal cannot be realized on the basis of Labor Code only.

Article 8 of the law on “municipal service”, which is about the restrictions related with the recruitment into municipal service, is full of legal gaps. Municipal servants are banned to hold a post in legislative, executive and judiciary bodies and use information collected during service for “other purposes”. In this regard, the law lags behind Article 4.3 of the regulations “tax service body of municipalities”, which shows that tax officials at municipalities are not supposed to engage in business and other paid activities, except for scientific and creative activities. It means that an

official in the tax service department of the municipality cannot be a paid employee at any other enterprise.

It can be inferred from Article 8 of the law that a municipal servant can work as a manager at a firm, an engineer at a plant, a tractor driver at a farm, an accountant at a bank, etc.

The law is totally inattentive towards the determination of salaries of municipal servants; Article 11 states that the servants will be paid within the financial capacity of local budgets and according to the schedule. Further, the article does not state anything about the salary payments in accordance with the positions and work experience. It fails to consider that on top of salaries in accordance with the schedule, there have to be additional bonuses too. In some cases, schedule-based salaries need to be multiplied with certain coefficients. In one word, this article treats the issue of salary – the importance of salary as an incentive – rather on the surface. Municipalities are granted “unlimited autonomy” in deciding upon the amount of salaries and it is obvious that this “autonomy” is bound to yield negative consequences.

Article 7 of the law on “municipal service” fails to mention about the necessity for the people working in private sector to abide by certain time-limits in municipal service and obligation of municipal servants to report about their incomes and properties while in post. Nor does it mention that the transparency of the financial situation of a servant working in the private sector is critical for the resolution of an important issue – avoiding any robbery of the public funds.

The law on “municipal service” does not define grounds and implementation mechanisms of legal responsibilities of municipal servants. The law fails to care for punishments – reprimands, dismissal, etc for those municipal servants that do not fulfill their duties and awards for the best performers, which can imply as though municipal servants have the status of “immunity”. The law does not provide anything about the responsibility of a municipal servant who causes damages to the municipality without mentioning that a servant carries a responsibility for his or her illegal behavior and shall avoid any unlawful behavior.

### **7.3. Recommendations**

Given the above-mentioned problems with the status, working conditions and social welfare of elected representatives and servants of municipalities in Azerbaijan, below are the relevant recommendations:

- *Guarantees shall be provided for the sustainability of the salaries for the municipal representatives during their permanent period of employment at municipalities;*
- *The law shall enshrine the major principles of municipal service.*
- *The law shall include classification of municipal servants;*
- *The law shall define the conditions of recruitment into municipal service and obtaining a status of a municipal servant;*
- *The law shall outline the principles and criteria for the performance assessment of municipal servants and for taking motivation measures;*
- *Gaps about the bans of municipal service will be abolished in the law;*
- *The law shall specify the responsibility of municipal servants to report about their incomes and properties;*
- *The law shall specify grounds and implementation mechanisms for the legal responsibility of municipal servants.*

## **8. MUNICIPAL PERSONNEL**

### **8.1. Council of Europe's papers about stronger capacity of personnel at municipalities**

The quality of services which local authorities provide hinges very much on the knowledge and skills of elected and appointed personnel at municipalities. It is not by chance that European Charter of Local self-government and other Council of Europe's papers underline the training capacity, knowledge and skills of people working at municipalities. This issue is also reflected in Recommendation 126 of the Congress to Azerbaijan.

Council of Europe Committee of Ministers' Recommendation 12 (2007) to member states on capacity building at local and regional level (an excerpt is provided below), European Congress of Local and Regional Authorities' Second European Conference's Recommendation 8 (1995), Decision 10 (1995) of Local and Regional Authorities' Second European Conference's Recommendation, and European Committee on Local and Regional Democracy's (CDLR) Review on "capacity building at the local level" all recommend designing a comprehensive training for the personnel of local authorities, including both elected representatives and municipal servants – to enhance their knowledge and skills without getting away from their service, as well as, developing a primary training system. The mentioned papers emphasize the relationship between the quality of services local authorities provide and personnel of local authorities.

Council of Europe Committee of Ministers' Recommendation 12 (2007) to member states on capacity building at local and regional level recommends to the member states that they should recognize experience of elected representatives, corporate management skills of the municipality, skills of personnel (experience, recruitment and retention of personnel) as major elements of the capacity of a local authority and ensure their future development. The paper also contains specific recommendations regarding the inter-organizational cooperation and international cooperation in order to develop occupational, leadership and other skills of personnel working at local authorities, and enhance knowledge and incentives for them.

### **8.2. Current situation in Azerbaijan**

One of the preconditions of efficient operations of municipalities is personnel since it is very much related with the quality of services and effective decision-making of municipalities. There are currently 15 thousand people elected to the municipalities and even more people work as municipal servants in Azerbaijan.

The studies show that the existing personnel at municipalities are not capable of organizing the activities of municipalities efficiently, which is firstly due to the unfair and non-free municipal elections, as well as, because of the legislation. The law on "municipal services" does not specify qualifications for particular positions at municipalities and nor does it define terms of competition for work. Rather, it proposes a different approach to personnel recruitment by stating in its Article 5 that heads of the executive structures which are established to carry out service delivery to local people and socio-economic programmes are assigned by the chair through the decision of municipality, and the rest employees are directly appointed by the chair. Thus, the legislation does not guarantee the basis for the professional personnel recruitment at municipalities and in the absence of particular criteria it is legally easy for nonprofessional and accidental people to be recruited into municipal service.

Despite the recent amalgamation of municipalities, many municipalities are still small in size, which, combined with the weaker financial potential, hinders the personnel development at municipalities. As a result, municipal commissions are not fully formed. There is a deficiency of qualified personnel in this specific area since municipalities lack necessary finance to maintain and develop people. This all leads to the less attractive municipal service in the country.

Another important reason for the weaker personnel at municipalities is because there is no system of training and retraining municipal staff. True, some measures have been taken over the last periods

on the way to train and retrain municipal personnel. Yet, they are inadequate for the improvement of the municipal administration.

The training of personnel for local self-governance is carried out in the Academy of Public Administration under the President of the Azerbaijan Republic, State Economic University, Baku Business University, Qafqaz University, Azerbaijan International University, Nakhchivan State University and Ganja State University.

The enrolment capacity for the specialization in “state and municipal governance” was 150 seats in 2009 and no substantial changes in the number of seats occurred in 2010 and 2011. There is not any significant change recorded in the number of seats for 2009. Since there is not any staff capacity development system for municipalities, appropriate curriculum planning and development is not carried out and advanced teaching methodology and technologies are not adequately applied in the teaching process. The training opportunities for staff capacity are not so many compared to their needs (there are more than 15 thousand officials working in municipal service). Since there is not profession-oriented course system in Azerbaijan it remains a challenge to divert the school leavers into municipality specializations.

There is so-called unsystematic approach towards the development of municipal staff capacity and it comes from the law on “municipal service”. According to article 6 of the law, municipal servant has the right to increase specialization and qualification level, whereas in practice municipal servants are not that interested to realize their right as the law does not contain the classification of municipal servants and specify the particular qualification requirements. This results in the chairman of the executive apparatus making any changes the way he thinks within the municipality.

Every year there are short-term courses organized at for municipal servants at the Public Administration Academy under the President for and Academy of Justice. However, it is not clear how the training needs and criteria are assessed for these courses (training topics). Besides, the number of course attendants are not that many compared to the total number of municipal servants. The 2010 yearly Ministry of Justice Report on the administrative supervision of municipalities states that there were organized 17 capacity building courses for municipal servants at the Academy of Justice and 327 participants. Also, Academy of Public Administration provided lectures on different topics to 381 elected representatives and servants, 24 per cent more than in 2009. From the official statistics it can be inferred that there is a need for more expedient capacity building and retraining for municipal staff.

As a result of the fact that there is not a single state policy on retraining and capacity building for municipal staff, only a small part of the municipal servant can benefit from the short-term courses organized by individual institutions. Also, for there is not an accreditation system for the programs covered in training courses of various institutions, the provided training sometimes end up having lower quality.

Despite the fact that the challenges of municipalities with responsibilities and funding have been partially resolved, the lower qualification level of staff could lead to people having limited access to quality services. That is why it is inevitable to execute some measures to enhance the staff capacity of municipalities. There are some measures taken under the state programme on “Poverty Reduction and Sustainable Development in the Azerbaijan Republic 2008-2015” are highly appreciated. The programme envisages that there will be training workshops for municipal servants and members to enhance their skills and potential, which will be in the format of exposure visits both in the country and internationally. Also, there will be activities in the education system to train qualified professionals for the management of municipalities.

### **8.3. Recommendations**

- *The law on “municipal service” shall be improved, qualification standards shall be set for particular positions in municipal services and job recruitment conditions be set out;*
- *Training System for Municipal Staff shall be built, teaching curriculum be improved, and official accreditation be organized for the teaching-training programs;*
- *The comprehensive re-training and specialization courses shall be provided under the Public*

*Administration Academy and special institute be created for qualified municipal officers;*

- *Capacity-building courses shall be based on needs-assessment. Municipal associations and authority state bodies should design mechanism to enable the proper and regular assessment of the capacity needs;*
- *Cabinet of Ministers shall establish qualification and professional standards for municipal service. It is possible to prepare the qualification-profession survey-booklet similar to those that are already available for a number of professions (e.g. education and healthcare workers);*
- *Municipal associations shall establish an information bank for the training and re-training and capacity building of municipal associations, where the number of undergraduates or graduates, trained and retrained staff members in municipal issues for each municipality and the list of topics provided during the courses throughout the year would be recorded. When there is no such information it is virtually impossible to assess the current qualification level of municipal members and identify the future development perspectives;*
- *A national strategy on re-training and capacity building of municipal officers should be worked out along with the establishment of regional teaching and training centers that would cover the majority of municipal members*

## **9. STATUS OF BAKU AS CAPITAL CITY AND FORMATION OF ELECTED CITY COUNCIL**

### **9.1. Council of Europe's papers on management and status of capital cities**

The capital cities play a significant role in the local self-governance system along with the symbolic meaning that these cities carry for the countries whose capitals they are. In other words, capital cities are also sometimes regarded as economic, political and cultural centers of the countries in international insofar as main political institutions are based and more people live in capital cities, thus playing a significant role in the economies of countries they represent. These very common features of capital cities differentiate capitals from other big settlements and industrial centers call for the determination of a special status for capital cities.

The Council of Europe's general attitude is that no agglomeration other than the capital city brings together so many administrative territorial units, which are in turn connected with each other through the dense network of infrastructure.

In the event of no single management and coordination among them, there would be a chaos and anarchy in the management of a capital city economy. Capital cities are such an intricate and permanently developing mechanism that in case of the absence of agreed-upon strategy the consequences would, on the one hand, require a lot of resources of the country to be liquidated. On the other hand, in such a complex arrangement, all the residents within the same city must have an equal access to public services. It would otherwise be hard to eliminate the misbalance in case if there were not integrity of the management.

Council of Europe has addressed 2 recommendations over the last six years to its member states. As per Recommendation 133 on «Governance of capital cities», there need to be such conditions and resources in the capital cities that they can independently carry out their administrative functions. According to Article 12 of the recommendation paper, one of the major conditionalities of the governance of any capital city is the public participation in decision-making process<sup>11</sup>.

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<sup>11</sup> The full text of the recommendation is available at the following link:

<https://wcd.coe.int/wcd/ViewDoc.jsp?id=935987&Site=Congress&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C>

Moreover, Council of Europe's Recommendation 219 on «Status of capital cities » (adopted in 2007) stipulates single local self-governance principles in central cities. Article 8 of the paper states that bodies under the supervision of the central government cannot compensate the affairs of the capital city's local self-government bodies<sup>12</sup>.

Finally, based on the CoE experts' studies among the member states, the following generalized findings emerged regarding the capital cities of the member states and the recommendations were developed on the basis of these findings. According to the recommendations and European Charter of Local Self-governments, unlike other cities, the capital cities with a special importance must have a single local self-government and capital cities must be allowed to create their own local self-governance system to ensure the principles of local self-governance are in place upon establishing the status of the capital city and centralized local self-government. Capital cities must also have adequate sources to generate their own incomes. Council of Europe assumes that the management of capital cities by appointed executives or local governments comes in contradiction with the principles of European Charter.

Finally, Congress Recommendation 188 (2006) on good governance in European metropolitan areas envisages several approaches about capital cities<sup>13</sup>, stating that due to the locomotive of the country's economy, the economic, political and cultural roles of European metropolitan areas are increasing. However, they have undergone some serious structural changes. Therefore, the congress believes that the application of good governance principles metropolitan areas is one of the major preconditions of ensuring the more democratic and effective governance in the large cities.

This governance should be subject to effective supervision mechanisms and regular evaluation. It should be open to political and public debate in local elections in order to mobilize citizens and lead a majority of urban citizens to support the collective urban political project. To promote the exercise of modern local democracy the Congress recommends the setting up of elected councils.

### **9.3. Current situation in Azerbaijan**

The issues of establishing a single municipality in the capital city of Baku, as well as, in Sumgait, Ganja and Shirvan cities where there are a number of small-size municipalities are still not resolved yet. The mayoral election in Baku is one of the major provisions of Recommendation 126 of May 21, 2003 ("local and regional democracy in Azerbaijan") addressed to the government of Azerbaijan by Council of Europe. Article 8.2.6 of the paper states: «Baku is governed by the state's executive body at the moment.

It is worth considering that capital cities are expected to deal with issues that transcend the frame of local interests. In order to ensure savings and efficiency in favor of these interests, there must be elected a city-wide democratic council. According to Council of Europe, this council does not come in contradiction with an idea of establishing municipalities in small areas. Its role is limited to founding a municipality that would cover and represent the whole city.

In the light of the above-mentioned approaches of Council of Europe, it is impossible not to see a sharp disparity in the access to services in Baku, be it electricity, gas or water supply, road and public transportation, which are for instance in a worse shape in Sabunchu, Garadagh or Surakhani districts than in Nasimi and Sabail districts. Another important argument in favor of the single management in the capital city is the fair distribution of financial resources across various districts of the capital city thorough equalization mechanisms. No doubt that the resources of areas densely populated by the people, including businesses, the rich need to be distributed in a way that favors the areas where the poor live. In view of Article 4.3 requirements of the European Charter on Local self-governments ('subsidiarity' principle states that the responsibilities for carrying out public affairs

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<sup>12</sup> The full text of the recommendation is available at the following link:

<https://wcd.coe.int/wcd/ViewDoc.jsp?id=1132951&Site=Congress&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C>

<sup>13</sup> the full text of the recommendation is available at the following link:

<https://wcd.coe.int/wcd/ViewDoc.jsp?id=994937&Site=Congress&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C>

related with local issues should be devolved to local self-government that are the closest to the residents), there is a need to delegate responsibilities of Executive Committee of Baku city, which is centrally appointed and not accountable to its residents, to a mayoral institution through democratic elections. Given all this, Council of Europe Congress of Local and Regional Authorities recommends that Azerbaijani government should adopt a special law about the capital city soon.

The governance of Baku is currently realized by 11 executive committees covering different administrative districts and one Baku City Executive Committee that provides overall management over the other district-level executive committees. The relations between Baku City Executive Committee and district level executive committees are bottom-up and based on mutual cooperation. Despite the fact that there is a local executive committee covering the whole city in Baku, there is not a municipality at the city level. As per the law on «municipal territories and lands» there are 52 municipalities in Baku city. Since the municipalities are all part of the same tier, there is not subordination among them and each of the municipalities is only responsible for the socio-economic issues and their management in its territory. The current local self-governance system excludes the establishment of a single municipality in cities including Baku with many districts. The municipality of Baku cannot be established because of the Election Code of the Azerbaijan Republic either; according to the election code the number of members of municipalities in Azerbaijan is defined based on the number of population in their territories. The maximum number of the population in the election code is set to be up to 299 999 people so that municipal members are elected and now in Baku there are around 3 million people. The status of Baku city is ascertained by the law of the Azerbaijan Republic on «territorial structure and administrative territorial division » and Article 5.9 of the law states that there must be adopted a law about Baku city.

It is vital to establish single city municipalities in Azerbaijan. Presently, the Election Code bans the single municipality in areas with a total population of more than 300 thousand people and therefore the territories of big cities with more than 300 thousand people, such as Ganja and Sumgayit, are split among several municipalities. It must be noted that such cities, just like capital cities, have a connected network of infrastructure and when a territory is split among various independent municipalities, it becomes difficult to effectively run the infrastructure and make decisions to address problems. Therefore, the ban on the establishment of local government council within the boundaries of the same administrative-territorial unit based on the maximum number of population should be abolished in the legislation of Azerbaijan.

### **9.3. Recommendations**

- 1. Legal obstacles should be removed for the establishment of single municipality of Baku city and the law on “Status of Baku city” be adopted to regulate the complexities around the status of Baku;*
- 2. Conditions for the elections to Municipal Council of Baku city, number of elected municipal people irrespective of the type of municipality and representation guidelines for all administrative units within the boundaries of the capital city should be reflected in the legislation;*
- 3. The division of responsibilities between to-be-established Baku municipality and Baku City Executive Committee and other state bodies and coordination of activities between them should be regulated through the law;*
- 4. The law on the “Status of municipalities” should clearly identify the responsibilities of the Baku City Municipal Council, status of the City administration to be founded through the Council’s decree and structure and scope of responsibilities of local administrative units;*
- 5. The municipality of Baku should be provided with necessary financial resources to effectively function and carry out its duties properly.*

## 10. REGIONAL ADMINISTRATION IN AZERBAIJAN

### 10.1. Council of Europe's papers on regionalization

Council of Europe, as well as, European Union member states pay special heed to the regional administration and it is not by chance that CoE has adopted several recommendations promoting the regional administration in member countries. Since these recommendations are aimed at regional administration in CoE member states, they are of importance for Azerbaijan too.

Congress Recommendation 65 on “current state of and prospects for regionalization in Europe” recommends to the member states the following:

- Recognize the value of regionalization as a political instrument for avoiding tension, or even conflicts, within the state;
- draw inspiration from the positive experience of certain European countries, where regionalization has been a not insignificant factor in improved national cohesion;
- Take greater advantage of the work of the Congress of Local and Regional Authorities of Europe to obtain fuller information on the characteristics of regionalization in member countries and its contributions to political stability, cultural fulfillment and economic development in particular.

Here the Congress also recommends that the Committee of Ministers should consider the current status of regionalization and include regionalization as an issue in their monitoring activities.

Congress Recommendation 83 (2000) on evaluation of regionalization in central Europe, especially in Poland recommends to the member states the following:

- Recognize the positive effects which can have regionalization on the development of the economy at national as regional level and to consider therefore the creation of regions as an important step for adapting the economic and political structures to the needs resulting from European integration and globalization;
- attach in the preparatory work for establishing regions the priority to the clarification of the division of competencies between the different tiers and to the means and systems planned for the redistribution of budgetary resources and financial transfers;

Congress Recommendation 126 on “local and regional democracy in Azerbaijan”, article 8.2.8 on “Regional issues” states that the appraisal of the situation of (or potential for) regional democracy in Azerbaijan must also take account of a further series of factors:

- the division of the country into eighty-six state districts directed by devolved authorities whose officials are reluctant to give up the extensive powers and prerogatives which they enjoy;
- the institutional situation of Baku which, as mentioned above, has no form of self-government, despite its size and population;
- the persistence of the conflict of Nagorno-Karabakh;

The recommendation states that this situation is obviously unlikely to encourage the Azerbaijani authorities to consider implementing a regionalization process which would only undermine the country's unity. However, the Congress recommends that the competent authorities of the Republic of Azerbaijan undertake to find solutions to each of the problems mentioned in sub-paragraph ii above, so that the debate on possible regionalization of the country can begin.

Congress Recommendation 278 on “regions with legislative powers: towards multilevel administration”

Congress Recommendation 278 (2009) Regions with legislative powers: towards multi-level governance” and other Recommendations, as well as, European Committee on Local and Regional Democracy (CDLR) report on “Regionalization and its effects on local self-government” talks about the effects of regionalization in federal and unitary states.

## 10.2. Current situation in Azerbaijan

There are a number of specificities of established local governance practices hindering the efficient public administration in Azerbaijan. First of all, there is no clarity about the principles of municipalities in Azerbaijan insofar as they are established neither based on administrative-territorial units nor on the basis of residential settlements (*the present legislation does not envisage any restrictions for establishment of municipalities on the basis of the number of population and territorial boundaries. As a result, up to 2009 Azerbaijan surpassed European countries for the total number of municipalities and a special share of small municipalities within all municipalities. Following the amalgamation process of municipalities in 2009, their number decreased and became larger. But it still remains unclear as to which principles guided this process because although it was stated that the amalgamation was done on the basis of administrative-territorial unions, in fact this principles was not followed in most cases*).

Since there is no principles of local self-governance based on administrative-territorial units (village, town, district and city), there was not applied the practice of differentiating municipal responsibilities in accordance with these units, whereas in international experience, the type of administrative-territorial units inevitable affects the differentiation of municipal responsibilities. For example, village infrastructure, relevant requirements and structure of the economy in villages are different from those of urban settlements<sup>14</sup>.

The evidence shows that the practice of local authorities with the same competences and duties across all types of units does not prove effective and the application of ‘subsidiarity’ principle in multi-level governance is considered more appropriate, which is also endorsed by the Congress Resolution 293 (2009)<sup>15</sup>. The structure of mutual relations between different levels of the public administration is not only determined by the number of existing levels, but also by the division of authorities among them. For example, it is quite obvious in the case of Poland, which has switched to a more stable economic development path compared with other Eastern Europe countries, where 2 additional tiers – ‘povit’ and ‘voyevod’ – were introduced in the aftermath of the public administration reforms of 1999, making it 3 tiers. Responsibilities are clearly divided among the three tiers<sup>16</sup>. In the case of other European countries too, there is a multi-level governance system. For example, in France, **districts** and cantons represent public administration and communes represent local self-governance. There is a clear division of competences among them and also the way they are organized varies across administrative territories<sup>17</sup>. There is a two-level governance in Hungary too: municipalities and precincts and there does not exist any hierarchical relationship between them and each of them has their own clearly defined responsibilities. There is also a two-tier governance system in Czech Republic, like in Hungary: municipalities as representing the lower tier and regions representing the higher tier. As of January 1<sup>st</sup>, 2000, the administration covers 14 regions, including Prague and the regional administration system that had existed by then got abolished. The clear division of competences for municipalities and regions has been carried out. There are many more similar examples from other countries<sup>18</sup>.

There are significant differences between the administrative-territorial division in the countries mentioned above and that of Azerbaijan. Azerbaijan has preserved the administrative-territorial division principles of soviet period and the existing territorial structure accounts for the current public administration system. It is a reality that the current administrative-territorial system is quite

<sup>14</sup> Better mechanisms of identifying responsibilities of municipalities in Azerbaijan. Support for Economic Initiatives. Baku, 2010

<sup>15</sup> **Regions with legislative powers: towards multi-level governance.** Resolution 293 (2009). The Congress of Local and Regional Authorities of the Council of Europe.

<sup>16</sup> **Децентрализация: эксперименты и реформы.** Органы местного самоуправления в Центральной и Восточной Европе. OSI/LGI. 2000

<sup>17</sup> Я. В. Старцев. Государственное и муниципальное управление в зарубежных странах. [www.humanities.edu.ru/db/msg/49349](http://www.humanities.edu.ru/db/msg/49349)

<sup>18</sup> Local Government and Public Service Reform Initiative (LGI) <http://lgi.osi.hu/countries.php>

centralized in Azerbaijan with no local authorities in regions and cities, while each of them have a single infrastructure network functioning as a single organism, and face problems that need to be addressed at the regional and city levels. The administration of regions and cities are fully assigned to the local executive bodies and municipalities work in parallel to the representatives of local executive bodies located in each of the villages.

The existing form of territorial administration, which is like one-tier governance with heads of executive committees mainly centrally appointed, drains the effectiveness of local governance. Therefore, this system needs reforms from the transition to regional administration to organization of local governance in line with the existing administrative and territorial structure. The public discourses on various approaches can result in the discovery of the most effective.

One of the arguments uttered in favor of the regional administration in Azerbaijan is that regionalization could reinforce the tendencies of separation. In fact, the Nagorny Karabagh war does justify such a claim, which was also mentioned by Congress of Local and Regional Authorities, which shows an understanding towards why Azerbaijan does not hurry up switching to regional administration system. Recommendation 126 of the Congress to Azerbaijan underlines this issue and recommends that state bodies should begin discussions about the creation of regions in Azerbaijan.<sup>19</sup>

Even though the administrative-territorial structure of units in Azerbaijan remains unchanged, there has been economic regionalization with now 10 economic regions. This existing economically-driven division could ease the transition to regional administration through the reforms in the territorial division.

### **10.3. Recommendations**

*Discussions around possibilities of regional administration and possible scenarios of adapting the current local administration system to regionalization shall be launched to make local governance more effective in Azerbaijan.*

## **11. PUBLIC PARTICIPATION AND ACCOUNTABILITY**

### **11.1. Council of Europe Papers on public participation and accountability**

Public participation and accountability are the core issues representing the spirit and philosophy of European Charter of Local Self-Government and it is not by chance that the preamble of it states that countries signing the paper agree to “consider that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member states of the Council of Europe”.

The charter envisages that local governments shall regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

The public involvement in local decision-making is the theme of additional seven papers of the Council of Europe, which are the following:

- Resolution 91 (2000) of the Committee of Ministers on “responsible citizenship and participation in public life”.
- Recommendation (2001) 19 of the Committee of Ministers to member states on “the participation of citizens in local public life” (Adopted by the Committee of Ministers on 6 December 2001)

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<sup>19</sup> See Annex 2. Recommendation 126 of Council of Europe Congress of Local and Regional Authorities on “local and regional democracy in Azerbaijan”.

- Recommendation (2004) 13 of the Committee of Ministers on “Participation of young people in local and regional life”
- Recommendation (2005) 182 of the Committee of Ministers on “*public participation in local affairs* and elections”
- Recommendation (2008) 242 of the Committee of Ministers on “*Integration and participation of young people at local and regional level*”
- Recommendation (2011) 307 of the Committee of Ministers on “*Citizen participation at local and regional level in Europe*”
- Resolution (2011) 326 of the Committee of Ministers on “*Citizen participation at local and regional level in Europe*”

Recommendation (2001) 19 of the Committee of Ministers to member states on “the participation of citizens in local public life” discusses efficient forms and mechanisms of public participation in decision-making processes, especially the increased role of greater women’s participation in shaping local policies, and the role of young people and children in sustainable development of the society. The committee recommends to the member states that they should create opportunities for local governments and their representatives and ensure functional decentralization (e.g. more powers and autonomy for the schools, kindergartens, elderly houses, hospitals, sports and resort centers, etc.) in order to stimulate greater public participation, motivate local governments towards greater public participation (through designing a code of conduct for municipalities and ensuring the compliance with it), make information accessible for the local decisions to become of public nature and keep people informed about the local decisions.

Recommendation (2004) 13 of the Committee of Ministers on “Participation of young people in local and regional life” emphasizes favorable conditions for the active participation of young people, through certain incentives, in local and regional life, and increase their role in building the cooperation between youth organizations and local and regional authorities, enable the young people to make comments at youth councils, youth parliaments or forums on the local and regional policies regardless of their affiliation with associations or organizations.

Recommendation (2011) 307 of the Committee of Ministers on “*Citizen participation at local and regional level in Europe*” proposes the following:

- creating an ‘open data’ source for public government information, which is a valuable element to increasing dialogue with citizens at the local and regional level;
- Introduce incentives to encourage local and regional authorities to use new information and communication technologies, including social networks, to increase citizen participation, and improve transparency and services to the public;
- Ensure that national and, where applicable, regional rules governing citizens’ initiatives are straightforward and not a disincentive for those wishing to launch an initiative.

Resolution 91 (2000) of the Committee of Ministers on “responsible citizenship and participation in public life” and Resolution (2011) 326 of the Committee of Ministers on “*Citizen participation at local and regional level in Europe*” underline the possibility of citizens to directly contact with officials as the cornerstones of effective governance at the local and regional level. They state that local and regional authorities shall take a leading role in the development of various networks and associations to encourage citizens’ participation, because citizens can better express their needs and rights and mobilize to influence local decisions in a balanced manner.

## **11.2. Current Situation in Azerbaijan**

The existing legislation of Azerbaijan envisages duties for the local authorities to regularly update citizens on their activities and involve them in local self-governance.

The law on “status of municipalities” of Azerbaijan entails the principle of transparency for municipalities’ activities. Article 15 of the law states that municipalities shall report to their voters no less than once every six months. Yet, the law fails to identify the forms and mechanisms of reporting as a result of which it is difficult to control and appraise the reporting of municipalities.

The law also states that municipalities shall disclose and make the information equally available for everybody without any hindrances and Article 30 mentions that municipalities, their administration and councilors shall respond to the requests of people accordingly within a month.

As per the law adopted in 2005 on “access to information” in the Azerbaijan Republic, municipalities, as “owners of information” are legally responsible to collect and store information, ensure an easy access to information, and communicate it to the public. According to Article 29 of the law, all kinds of information, except those banned by law, including budget figures, instructions of municipalities activities, timetables, detailed information (full name, telephones, address, education, specialty, etc.) about the officials working at municipalities, conditions and results of public and municipal procurement, as well as, sales and change of ownership of public and municipal properties, reception hours of municipal heads, shall be disclosed to the public. Dealing with the techniques of information disclosure, Article 30, paragraph 1, of the law states that public information shall be disclosed through internet. However, the later paragraphs of Article 30 fail to mention the disclosure of information through other means such as official publications, libraries, and premises used by the public.

The above-mentioned makes an impression that everything is ok regarding the responsibilities of municipalities to disclose the information. However, there is a tiny yet critical difference between the disclosure and dissemination of information. The disclosure of information is rather passive process - this process at best provides an opportunity for the public to get familiar with official papers – whereas the dissemination of information is quite active with officials disseminating the information of public importance that has accumulated during their tenures through publications, announcements, press and other contemporary means.

The review of the situation regarding the use of the most common technology of publicizing the information nowadays – online resources (WebPages) – shows that a great majority of municipalities do not have internet resources.

It is partly because of weak financial resources of municipalities (especially, village municipalities), and partly because municipalities themselves are not tempted to disclose the information. In the past, some NGOs realized projects to create websites for municipalities, yet, this has not contributed to the solution of the problem. Only two per cent of municipalities have websites in the country.

There are some provisions in the law about the supervision over the activities of municipalities; Article 10 of the law on «financial sources of municipalities» states that the draft budget for the next year shall be published to let the local people have an idea of it within ten days of discussing it in a municipal sitting.

Article 12 of the law on «local (municipal) taxes and fees» (5) provides that supervision over the collection, transfer into the local budgets of the local taxes and fees and their use is carried out by appropriate municipal commissions, or by those not employed by elected bodies or in municipal service, who are proposed in the local “mahalla” (quarter) or citizens’ gatherings, or by supervision commissions that are approved at municipal sittings. If need be, an independent outside auditor can be involved to carry out the appropriate investigations upon the decision of municipalities in order to make things clear with the collection and use of local taxes and fees. The collection and use of local taxes and fees must be done in a completely transparent way. As per the legislation, for the transparency, municipalities and a corresponding supervision commission must report to their citizens, publish brochures, and post their annual reports on boards in front of their municipal buildings.

Also, the law on “management of municipal lands” states that municipalities shall report to their citizens once a year about the turnover of lands. Yet, this provision is not specific enough and does not entail the punishment for the municipalities that breach this law.

The law on “local polls” states initiatives groups of 15 people can be created to carry out a local poll in the territory of a municipality. The initiatives groups can hold a meeting and introduce issues that will be in the polls, appoint a responsible person for the poll and go to the poll commission in the territory to get registered.

Thus, the legislation has a number of provisions for the transparent operations of municipalities, as well as, for the citizens to get closely involved in the affairs of their municipalities. However, the

studies demonstrate that in many cases municipalities are disinterested and neglect to follow the provisions of the law in this regard. There are several reasons for that; firstly, the present financial and authority status of municipalities does not enable them to look as reputable bodies in the eyes of citizens. Even though municipalities collect the taxes and fees assigned to them (there are serious problems here too), they are still unable to implement a project due to lacking funds. Thus, the level of trust begins to decline between citizens and municipalities.

Unfair and not-free municipal elections in the country, illegal interventions of local executive committees and state bodies in the affairs of municipalities and many other factors discourage municipalities to function in a transparent and accountable manner.

Imprecise and uncertain legislation about the public accountability and absence of mechanism of holding people accountable for the breach of requirements of transparency and accountability and participation lead municipalities to avoid reporting to their citizens.

### **11.3. Recommendations**

The following are recommended to enhance accountability of municipalities before the public, as well as, public participation in local governance:

- *The laws shall be modified to add specific and clear requirements of accountability and public participation;*
- *The provisions on accountability and public participation in the present laws shall be made more precise and effective operational mechanisms shall be worked out;*
- *Mechanisms of responsibility for the breach or ignoring of requirements of accountability and participations shall be made precise;*
- *The government shall stimulate municipalities to work in a transparent and accountable manner with the public and involve citizens, especially women and young people, in the local decision-making processes;*
- *The laws shall entail duties to create and operate Public Relations department at municipalities and;*
- *Action plans shall constantly be developed for the public participation and accountability at municipalities and to increase the awareness among citizens of local government affairs.*

**Legislation:**

1. The Constitution of Azerbaijan Republic
2. The law of the Azerbaijan Republic on “status of municipalities”
3. The law of the Azerbaijan Republic on “financial resources of municipalities”
4. The law of the Azerbaijan Republic on “local (municipal) taxes and fees”
5. The law of the Azerbaijan Republic on “management of municipal lands”
6. The law of the Azerbaijan Republic on “financial resources of municipalities”
7. The law of the Azerbaijan Republic on the approval of a resolution on “Coordination Councils for the local self-governance in Azerbaijan”
8. The law of the Azerbaijan Republic on “status of municipal representatives”
9. The law of the Azerbaijan Republic on the approval of the Resolution on “Permanent and other Commissions of Municipalities”
10. The law of the Azerbaijan Republic on “joint operations, mergence, separation and cancelation of municipalities”
11. The law of the Azerbaijan Republic on the approval of “exemplary Resolution on “Regional Associations of Municipalities”
12. The law of the Azerbaijan Republic on “transfer of properties to municipalities”
13. The law of the Azerbaijan Republic on “municipal service”
14. The law of the Azerbaijan Republic on the approval of the Exemplary Resolution of Municipalities.
15. The law of the Azerbaijan Republic on “municipal territorial and lands”
16. The law of the Azerbaijan Republic on “administrative supervision of municipalities”
17. The law of the Azerbaijan Republic on “access to information”
18. The law of the Azerbaijan Republic on “residential and production wastes”
19. The law of the Azerbaijan Republic on “budget system”
20. The law of the Azerbaijan Republic on “territorial structure and administrative division of territories”
21. Code of Land of the Azerbaijan Republic
22. Code of Taxes of the Azerbaijan Republic
23. Code of Election of the Azerbaijan Republic
24. Resolution on “Local executive committee”
25. «Guidelines of cleaning the residential areas in accordance with sanitary, hygienic and ecological norms, and temporary preservation, transportation and rendering harmless of residential wastes» approved through Cabinet of Ministers’ Decree 74.
26. 2008-2015 state programme of poverty reduction and sustainable development in the Azerbaijan Republic approved with presidential decree of 15 September 2008
27. Resolution on the guidelines and periods of the transfer of properties to municipalities approved by the presidential decree (498) of 11 June 2001
28. Decision 106 (8 July, 2002) of Cabinet of Ministers, the list of properties to be transferred to municipalities
29. The law of the Azerbaijan Republic on “land reforms”
30. Presidential decree on the changes to certain laws to regulate “the sale or hire of municipal lands through auctions”.
31. The law of the Azerbaijan Republic on “establishment of new municipalities through the merger of municipalities”
32. The law of the Azerbaijan Republic on “establishment of new municipalities through the merger of municipalities in the Nakhchivan Autonomous Republic”.

33. Charter of Local Self-Government
34. Explanatory “notes” of Council of Europe’s experts to the provisions of the Charter
35. Recommendation 126 (2003) of Council of Europe on “local and regional democracy in Azerbaijan”
36. Recommendation 79 (2000) of the Council of Europe on “The financial resources of local authorities in relations to their responsibilities: a litmus test for subsidiarity”.
37. European Committee on Local and Regional Democracy (CDLR) under Council of Europe on “local authorities competences in Europe” in 2007
38. Recommendation 157 (2004) of Council of Europe on “local and regional democracy in Georgia”
39. Recommendation 226 (2007) of Council of Europe on “local and regional democracy in Croatia”
40. Recommendation (2004) 13 of the Committee of Ministers on “Participation of young people in local and regional life”
41. Recommendation (2005) 182 of the Committee of Ministers on “*public participation in local affairs* and elections”
42. Recommendation (2008) 242 of the Committee of Ministers on “*Integration and participation of young people at local and regional level*”
43. Recommendation (2011) 307 of the Committee of Ministers on “*Citizen participation at local and regional level in Europe*”
44. Resolution (2011) 326 of the Committee of Ministers on “*Citizen participation at local and regional level in Europe*”
45. Resolution 91 (2000) of the Committee of Ministers on “responsible citizenship and participation in public life”.
46. Recommendation 132 (2003) on municipal property in the light of the principles of the European Charter of Local Self-Government
47. Recommendation (2001) 19 of the Committee of Ministers to member states on “the participation of citizens in local public life” (Adopted by the Committee of Ministers on 6 December 2001)
48. Recommendation 221 (2007) on “The institutional framework of inter-municipal co-operation” of the Congress
49. Recommendation 133 (2003) on “Governance of Capital cities” of the Congress
50. Recommendation 219 (2007) on “status of capital cities” of the Congress
51. Recommendation 188 (2006) on “good governance in European metropolitan areas” of the Congress

## Reports

52. (Report on local and regional Democracy in Azerbaijan - CG (10) 4 Part II Rev
53. Ministry of Justice Annual Report (2010) on Administrative supervision of municipalities
54. Statistical reports 2005-2010 of the State Statistics Committee of Azerbaijan
55. Statistical bulletins of the State Statistics Committee of Azerbaijan on the budgets of municipalities.
56. Reports on the findings from the monitoring of auctions and competition in Barda and Salyan districts for the sales of municipal lands, Baku -2009. SEI, [www.sei.az](http://www.sei.az)
57. State Statistics Committee bulletin on “local budget information for 2010”

## Reviews and Recommendations

1. Recommendation 113 (2002) on relations between the public, the local assembly and the executive in local democracy (the institutional framework of local democracy)
2. Recommendation 151 (2004) on advantages and disadvantages of directly elected local executive in the light of the principles of the European Charter of Local Self-Government

NGO Alliance for Municipal Development

3. Recommendation 219 (2007) on “status of capital cities” of the Congress
4. Recommendation 133 on “status of capital cities” of the Congress
5. Strengthening Municipalities in Azerbaijan - Conceptual paper (2007)
6. Enlargement mechanisms of municipalities in Azerbaijan. SEI (2008)
7. Current and improved mechanisms of electing municipal heads. Towards Civil Society. (2008)
8. Survey findings from 2004 - 2008
9. Review of the Toward Civil Society Independent Consulting and Assistance Center (23 December 2009).
10. Necessary technologies of balancing the social composition of elected municipal bodies. SEI
11. Post-Amalgamation situation of municipalities in Azerbaijan. NGO Alliance for Municipal Development *and* SEI. Baku – 2010.
12. Reports on the findings from the monitoring of auctions and competition in Barda and Salyan districts for the sales of municipal lands, Baku -2009. SEI, [www.sei.az](http://www.sei.az)