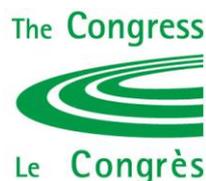


The Congress of Local and Regional Authorities



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Local and regional democracy in Azerbaijan

Monitoring Committee

Rapporteurs: Jos WIENEN, The Netherlands (L, EPP/CD¹)
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Summary

This is the second report concerning the monitoring of local and regional democracy in Azerbaijan since 2003. The rapporteurs deeply regret that, since then, most of the recommendations addressed in 2003 to the national authorities have not been implemented; nor has a timeline been set to take them on board in the foreseeable future. In this context, the Government is invited to take the necessary measures to adopt an action plan in order to implement the Congress recommendations. The report stresses the virtual inexistence of local self-government and the supervision of state bodies in the so-called municipalities, as well as the weak financial potential of municipalities, and the lack of a procedure for consultation with municipalities and national associations of municipalities, in due time and in an appropriate way, in planning and decision-making for all matters which concern them directly.

The report recommends, among other things, that the Azerbaijan Government review the law of the Republic of Azerbaijan on the status of municipalities with the aim to recognise municipalities as decentralised institutions exercising public power as part of the overall public administration, reconsider substantially and clarify the division of tasks and powers between parallel structures of local public administration, transferring the most important local public competences to municipalities and allocate sustainable financial resources to municipalities, commensurate with their competences, and ensure that municipalities can freely dispose of their resources within the scope of their powers. Finally, the Congress calls on the Azerbaijani authorities to enact a law on the special status of the capital, Baku, to consider providing a system of democratic election for the local government of Baku city.

¹L: Chamber of Local Authorities / R: Chamber of Regions
ILDG: Independent and Liberal Democrat Group of the Congress
EPP/CD: European People's Party – Christian Democrats of the Congress
SOC: Socialist Group of the Congress
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a Political Group of the Congress
NPA: No political affiliation



Local and regional democracy in Azerbaijan

RESOLUTION 345 (2012)²

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

a. that Azerbaijan joined the Council of Europe in January 2001 and in doing so, committed itself to contributing to the creation of a common democratic and legal area throughout the whole of the European continent, ensuring respect for the fundamental values of the Organisation – human rights, democracy and the rule of law – and to complying with European standards;

b. that Azerbaijan ratified the European Charter on Local Self-Government (ETS No. 122) on 15 April 2002, which entered into force in its respect on 1 August 2002, thereby committing Azerbaijan to embedding the principle of local self-government in its domestic law in order to guarantee its effective implementation and, notably, to transferring competences to local communities with concomitant financial resources and to ensuring a full implementation of the principle of subsidiarity to guarantee the establishment of local self-government as provided by the above-mentioned charter;

c. its previous Recommendation 126 (2003) and Resolution 151 (2003) on local and regional democracy in Azerbaijan.

2. The Congress welcomes the creation of three national associations of local authorities, but wishes that they could play a more active role in representing municipal interests.

3. In addition, it observes that most of the recommendations addressed in 2003 to the national authorities have not been implemented; nor has a timeline been set to take them on board in the foreseeable future, making these recommendations still eminently relevant.

4. It refers to the explanatory memorandum, which reiterates its recommendations and expresses serious concerns as regards, in particular, the non-compliance with most of the provisions of the European Charter of Local Self-Government ratified by Azerbaijan.

5. In the light of these considerations, the Congress:

a. invites its Bureau to consider inviting the Minister of Justice of Azerbaijan, in his capacity as Minister for Local Authorities, to address the Congress during its October session in 2013, and to discuss the developments envisaged by Azerbaijan's authorities;

b. invites its Monitoring Committee to:

i. organise urgently in Baku a seminar on the implementation of the European Charter of Local Self-Government in Azerbaijan in co-operation with national, regional and local authorities, and relevant non-governmental organisations (NGOs) in the field of local democracy;

ii. carry out a mid-term monitoring visit in order to assess the situation of local and regional democracy in the light of Congress Recommendation 326 (2012), and to evaluate the progress made in the meantime.

²Debated and adopted by the Congress on 17 October 2012, 2nd Sitting, rapporteurs: J. Wiene, Netherlands (L, EPP/CD) and G. Mosler-Törnström, Austria, (R, SOC).

Local and regional democracy in Azerbaijan

RECOMMENDATION 326 (2012)³

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

a. Article 2, paragraph 1.*b*, of Statutory Resolution CM/Res(2011)2 of the Committee of Ministers relating to the Congress of Local and Regional Authorities of the Council of Europe, which stipulates that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of the above-mentioned Statutory Resolution CM/Res(2011)2, which stipulates that: “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. its Resolution 307 (2010) (revised) on procedures for monitoring the obligations and commitments entered into by the Council of Europe member states in respect of their ratification of the European Charter of Local Self-Government (ETS No. 122);

d. its Recommendation 219 (2007) on the status of capital cities, Recommendation 132 (2003) on municipal property in the light of the principles of the European Charter of Local Self-Government and Resolution 299 (2010) on follow-up by the Congress of the Council of Europe Conference of Ministers responsible for Local and Regional Government (Utrecht, Netherlands, 16-17 November 2009);

e. its Previous texts on local and regional democracy in Azerbaijan – Recommendation 126 (2003) and Resolution 151 (2003).

2. The Congress underlines that:

a. Azerbaijan became a member of the Council of Europe on 25 January 2001. It signed the European Charter of Local Self-Government on 21 December 2001 and ratified it on 15 April 2002. The charter entered into force in respect of Azerbaijan on 1 August 2002;

b. Azerbaijan declared itself not to be bound by Articles 4.3, 7.2, 9.5, 9.6 and 10.3 of the European Charter of Local Self-Government and formulated a declaration which reads as follows: “The Republic of Azerbaijan declares that it is unable to guarantee the application of the provisions of the Charter in the territories occupied by the Republic of Armenia until these territories are liberated from that occupation”;

c. Azerbaijan has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) nor Protocol No.3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (CETS No. 206);

d. the Congress Monitoring Committee appointed Mr J. Wienen and Mrs G. Mosler-Törnström as rapporteurs and instructed them to prepare and submit to the Congress a report on local and regional democracy in Azerbaijan;

³Debated and adopted by the Congress on 17 October 2012, 2nd Sitting, rapporteurs: J. Wienen, Netherlands (L, EPP/CD) and G. Mosler-Törnström, Austria, (R, SOC).

e. the Congress would like to thank the Permanent Representation of Azerbaijan to the Council of Europe, the Azerbaijani authorities at central, regional and local level, the representatives of Azerbaijani non-governmental organisations (NGOs) specialised in local administration and all their other interlocutors for their valuable co-operation during the different stages of the monitoring procedure and for the information provided to the delegation, which ensured the smooth conduct of the visit.

3. The Congress notes with satisfaction:

a. the creation in 2006 of three national associations of municipalities (villages, towns and cities) to represent municipal interests at national level;

b. the signature of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106);

c. the signature on 10 February 2010 of the decree by the President of Azerbaijan authorising the application of the law of the Azerbaijan Republic on "State registry and provision of municipalities with proper certificates", which provides that the State Land and Mapping Committee has to work out and submit maps of municipal lands to the body in charge of the State registry of municipalities by 1 January 2013.

4. The Congress deeply regrets that most of the recommendations addressed in 2003 to the national authorities have not been implemented; nor has a timeline been set to take them on board in the foreseeable future, making the following issues still highly relevant:

a. the insufficient and ambiguous definition of local-self-government⁴ in the law on the status of municipalities (Articles 2 and 3 of the European Charter of Local Self-Government);

b. the parallelism in the local self-governance system, which according to the constitution is carried out by both local executive committees, which are State bodies, and municipalities which only have a very limited role (Articles 3 and 4 of the charter);

c. the subordination, in practice, of municipalities to local executive committees which are part of the State administration (Articles 3 and 4 of the charter);

d. the imprecise division of competences and responsibilities between municipalities and local executive committees (Article 4 of the charter);

e. the weak financial potential of municipalities due to low-level State transfers provided to them and the ineffectiveness of the tax collection mechanisms available to municipalities (Article 9 of the charter);

f. the lack of a procedure for consultation with municipalities and their national associations, in due time and in an appropriate way, in planning and decision making for all matters which concern them directly (Article 4.6 of the charter);

g. the gaps in the legislation governing the status and responsibilities of municipal servants on the one hand, and their rights and obligations on the other (Article 6 of the charter);

h. municipalities' lack of property and the slowness of property transfers from the State to municipalities, in particular as regards land;

i. the lack of clarity of the law on the status of municipalities, regarding the procedure of supervision of municipalities, and notably the local governments' obligation provided by Article 146-IV of the constitution, to report to the parliament about their own operations (Article 8 of the charter);

⁴. Article 1 of the law on the status of municipalities in Azerbaijan mentions that: "Local self-government in the Republic of Azerbaijan is a system of organizing citizens' activity" and Article 2.2 of this law defines the municipalities as "bodies created by the municipality and not included in the system of state in order to organize municipal service and with a view to resolve issues of local importance".

j. the lack of consultation on the part of central authorities with representatives of the three national associations of municipalities in the decision-making process in the field of local self-government; these associations do not have any active role in practice to represent municipal interests at national level (Article 4.6 of the charter);

k. the fact that the capital city of Azerbaijan is not governed by an integrated local government body such as a democratically elected council, but by an executive authority, accountable only to the president, with no democratic control;

l. the legislative gap concerning the status of Baku, the capital city, although it is foreseen by the law of the Azerbaijan Republic on "territorial structure and administrative territorial division", namely by Article 5.9 thereof, which states that a law on Baku city must be adopted.

5. The Congress recommends that the Committee of Ministers invite the Azerbaijan authorities to:

a. review the law of the Republic of Azerbaijan on the status of municipalities with the aim of recognising municipalities as decentralised institutions exercising part of the overall functions of the State;

b. reconsider substantially and clarify the division of tasks and powers between parallel structures of local public administration, transferring the most important local public competences to democratically and politically accountable municipalities;

c. put an end to the subordination, in practice, of municipalities to local State committees, in order to allow municipalities to regulate and manage a substantial share of public affairs under their own responsibility and in the interest of the local population;

d. allocate sustainable financial resources to municipalities, commensurate with their competences, and ensure that municipalities can freely dispose of their resources within the scope of their powers;

e. distribute State transfers and special grants in a transparent and predictable manner, taking the interests of local governments into consideration;

f. improve the efficiency of the tax collection mechanism in municipalities and actively co-operate with municipalities, in order to better ensure adequately qualified personnel to implement these procedures;

g. create appropriate procedures of consultation with municipalities and the national associations which represent them, which take into account criteria of timeliness and appropriateness as provided by the European Charter of Local Self-Government, in the planning and decision-making processes for all matters which concern them directly;

h. ensure a high level of transparency in local government mergers by determining the strategic objectives and goals of any further municipal integration and discussing them with the municipalities concerned as well as with their associations, prior to any change of local government administrative borders;

i. raise the effectiveness of measures to launch capacity-building and proper training programmes for members of municipal staff, in order to improve the quality of their daily administrative work;

j. provide all municipalities with administrative buildings as quickly as possible, and finalise the issuing of property documents, especially those in the capital, in the light of Congress Recommendation 132 (2003) on municipal property and the principles of the European Charter of Local Self-Government;

k. clarify the legislation and determine the exact role of the administrative authorities which are empowered to exercise legal supervision over municipalities, thereby eliminating the uncertainty in the current legislation which contradicts the European Charter of Local Government;

l. abolish the obligation on local governments to report to parliament about their own operations and limit the supervisory authority of central government to the control of lawfulness of municipal acts;

m. involve or strengthen the involvement of representatives of the three national associations of local authorities (villages, towns and cities) in the decision-making processes related to local government in order to give them the possibility to represent the interests of municipalities at national level;

n. consider providing a system of democratic election for the local government of Baku city;

o. establish a law for Baku city as required by Article 5.9 of the law of the Azerbaijan Republic on "territorial structure and administrative territorial division" in the light of Congress Recommendation 219 (2007) on the status of capital cities and Recommendation 133 (2003) on management of capital cities.

6. The Congress invites the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take into consideration the present recommendation and the related Congress resolution on local and regional democracy in Azerbaijan, as well as the explanatory memorandum, in their own monitoring procedures and other activities related to this member State.

Local and regional democracy in Azerbaijan

EXPLANATORY MEMORANDUM⁵

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⁵ Adopted by the Monitoring Committee on 6 July 2012.

1. INTRODUCTION

1. Pursuant to Article 2, paragraph 3 of Statutory Resolution (2011)² of the Council of Europe Committee of Ministers, the Congress of Local and Regional Authorities (hereinafter referred to as "the Congress") regularly prepares reports on the state of local and regional democracy in all Council of Europe member states.

2. Azerbaijan signed the European Charter of Local Self-Government (ETS 122, hereinafter "the Charter") in December 2001, and ratified it by a law that entered into force on 1 August 2002. Azerbaijan declared itself not bound by Articles 4(3), 7(2), 9(5), 9(6) and 10(3) of the Charter. Moreover, it declared that "it is unable to guarantee the application of the provisions of the Charter in the territories occupied by the Republic of Armenia until these territories are liberated from that occupation".

3. Azerbaijan also signed and ratified:

a. on 1 January 2004, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No.106), which came into force in respect of Azerbaijan on 1 July 2004;

b. on 1 January 2004, the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No.159, which came into force in respect of Azerbaijan on 1 July 2004;

c. on 1 January 2004, Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No.169, which came into force in respect of Azerbaijan on 1 July 2004.

4. Azerbaijan has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) and Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (CETS No. 206).

5. The Congress Monitoring Committee appointed Mr Jos WIENEN (The Netherlands, L, EPP/CD) and Mrs Gudrun MOSLER-TÖRNSTRÖM (Austria, R, SOC) as rapporteurs and instructed them to prepare and submit to the Congress a report on local and regional democracy in Azerbaijan,⁶ in order to update the latest Resolution 151 and Recommendation 126 (2003).

6. A visit to Azerbaijan (Baku) took place from 2 to 5 April 2012. The delegation met officials and elected representatives of the various tiers of government as well as representatives of NGOs and associations (for further details, see the programme in appendix 1).

7. The co-rapporteurs wish to thank the Permanent Representative of the Republic of Azerbaijan to the Council of Europe, the Azerbaijani authorities at central, regional and local level, representatives of Azerbaijani NGOs working in the field of municipality development, and all their interlocutors for their valuable co-operation at the different stages of the monitoring procedure and for the information provided to the delegation, which ensured the smooth conduct of the visit.

8. This report has been prepared on the basis of the information and data collected during the monitoring visit and received from the national institutions and the Azerbaijani delegation to the Congress as well as from all other Azerbaijani counterparts during and after the visit.

¹⁰ The two co-rapporteurs were assisted by Professor Zoltán SZENTE, consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government, and Ms Stéphanie POIREL, Secretary of the Monitoring Committee of the Congress.

2. GENERAL DATA AND POLITICAL CONTEXT

9. Azerbaijan is located in the South Caucasus and is bordered by Russia to the north, the Caspian Sea to the east, Iran to the south, Turkey, Georgia and Armenia to the west. The population of the country (2012⁷) is 9,235 million. According to the last census of 2009 the largest ethnic group is the Azerbaijanis (91.6%), while the country's minorities are as follows: Lezghins 2.0%, Russians 1.3%, Armenians 1.45%, others 3.79%. The official state language is Azerbaijani, which is enshrined by the Constitution.

10. Azerbaijan declared its independence from the former Soviet Union on 30 August 1991. The official name of the country is the Republic of Azerbaijan (*Azərbaycan Respublikası*). The state Constitution was adopted in 1995, since when it has been modified twice, in 2002 and 2009 respectively.

11. Azerbaijan is a unitary state. According to Article 11 of the Constitution: "The territory of the Azerbaijan Republic is sole, inviolable and indivisible". Apart from the Nakhchivan Autonomous Republic, there are no other autonomous regions in Azerbaijan. As mentioned in Article 134 (I and II) of the Constitution, "(the) Nakhchivan Autonomous Republic is the autonomous state within the Azerbaijan Republic. The Nakhchivan Autonomous Republic is an integral part of the Azerbaijan Republic."

12. The conflict of the Nagorno-Karabakh (*Dağlıq Qarabağ*) region after two decades remains a sensitive issue. The conflict in this region broke out in 1988, and a ceasefire was negotiated by Russia in 1994 and was ratified by Azerbaijan and Armenia. Since 1992, the OSCE's Minsk Group has been in charge of negotiating a political solution to the conflict in and around Nagorno-Karabakh. The Minsk Group is co-chaired by France, the Russian Federation and the United States. No solution to this conflict has been found to date.

13. Azerbaijan is a presidential republic. Although the Constitution declares that state power is based on the principle of separation of powers (Art. 7(III)), the President of Azerbaijan embodies the unity of the people and the continuity of Azerbaijan's statehood and is also the guarantor of the independence and territorial integrity of the state. Until 2008, the constitution allowed the re-election of the head of state only once, but that year the parliament approved a resolution abolishing the presidential term limits. Initially, the President could only run for two consecutive terms. The relevant constitutional amendment was submitted to a national referendum and was accepted. This measure is particularly important since the incumbent head of state, Mr Ilham Aliyev, who was firstly elected president in October 2003, and was re-elected in 2008, is the son of the former president, Mr Heydar Aliyev, who himself was elected to this position twice (the voter turnout was 79.18% in 1998, 71.23% in 2003 and 75.64% in 2008). According to domestic and international observers,⁸ none of the presidential elections met the international standards of free elections.

14. According to the constitution, the executive power is exercised by the President of the Azerbaijan Republic, who appoints and dismisses the members of the cabinet, which is politically accountable to him. The President submits the state budget to the parliament for approval. He approves state economic and social programmes, so that his decisions are of key importance for local developments and, in general, for local communities. The cabinet ministers are responsible for the implementation of the President's executive decisions.

15. The unicameral parliament (*Milli Majlis*) is the legislative power and all its 125 deputies are elected in single-member constituencies. The Government party has an absolute majority in the National Assembly, while most other deputies are formally independent MPs. The two major opposition parties, the Azerbaijan Popular Front (AXCP) and the Equality Party (Musavat), have not had any representatives in the parliament since the last general elections in 2010. Most seats (73 of the 125) were won by the ruling party, the New Azerbaijan Party (*Yeni Azərbaycan Partiyası*). There were elected 48 formally independent candidates but the majority of them are loyal to the government. The

⁷ The State Statistical Committee of the Republic of Azerbaijan, http://www.azstat.org/publications/azfigures/2012/en/004en.shtml#t4_1

⁸ OSCE/ODIHR Election Observation Mission, Final Report, Warsaw, 25 January 2011, PACE Observation of the parliamentary elections in Azerbaijan (7 November 2010), Doc. 12475/24 January 2011.

turnout at the last parliamentary election was 50.1% of the total of 4.9 million people eligible to vote. It was 42.2% in 2005, and 71.33% in 2000.

16. According to the constitution, the judicial power is exercised by courts and the Constitutional Court. The basic law provides the usual guarantees of judicial independence and enshrines the principle of a fair trial. The Constitutional Court consists of nine judges appointed on the recommendation of the President by the *Milli Majlis*. The Court examines the compatibility of laws, regulations and other normative legal acts with the Constitution and other laws, and provides interpretation of the Constitution and laws.

3. CONSTITUTIONAL AND LEGISLATIVE BASES OF LOCAL GOVERNMENT IN AZERBAIJAN

17. The Constitution of Azerbaijan (*Azərbaycan konstitusiyası*) recognises local self-government in Section 4 (which includes Chapter IX on “Municipalities”), which contains provisions on the organisation and scope of responsibility of municipalities and on guarantees of their independence. A separate chapter (Chapter VIII) is devoted to the Nakhchivan Autonomous Republic and comprises provisions on its constitutional status, its highest authorities and the division of powers between them.

18. According to Article 124 and Chapter IX of the Constitution, local government⁹ is carried out by both local executive authorities and state bodies and municipalities.¹⁰ Local executive bodies are run by chief executives who are appointed and dismissed by the President of Azerbaijan, who also determines the powers of these bodies. Members of municipal councils are directly elected by the citizens, but the chairs of these councils are elected by the council members (indirect election).

19. According to Article 1 of the Law on the Status of Municipalities “local self-government in the Republic of Azerbaijan is a system of managing the citizens’ activity that grants to its citizens the ability to resolve important local issues independently and freely (...)”. According to the Article 2(2), municipalities are constituted by bodies that are established by municipalities to deal with local issues within their powers and are not part of the system of state bodies.

20. The Constitution does not define local self-government and merely refers to it as being “carried out by municipalities”, which are elected bodies (Art. 142(I) and (II)). In particular, it does not regulate local self-government in Section 3 on “State power”, which implies that municipalities are not included among the public authorities exercising state power. It does not define municipalities as institutions forming part of the overall public administration. Accordingly, the relevant provisions do not include the main components of the Charter’s definition of local self-government since they enshrine neither the right of local authorities to regulate and manage local public affairs nor the concept of the interest of the local population.

21. The Law on the Status of Municipalities of the Republic of Azerbaijan (Art.1) also defines local self-government as being outside the state organisation system, characterising it as “a system of organising citizen’s activity”⁹, even though the definition refers to the function of local self-government “to resolve important local issues”, and “to implement some state functions”, or to the “interests of the local population” (section 1). However, this law does not ensure that these “important local issues” are resolved by the municipalities by employing their public powers. At the same time, some elements of the legal status of municipalities look like features of a real institution of state power. For example, municipalities are elected bodies, their internal organisation is determined by law and they have a specific territory that is also approved by law. Moreover, some taxes determined by law are paid to them and, referring more explicitly to their public powers, the constitution allows municipalities to enact local by laws which are “binding on citizens living in” their territory (Art. 150). Nevertheless, as mentioned above, the Law does not recognise local governments as parts of the state, declaring that “municipalities and their bodies shall not be included in the system of state bodies” (Article 14(4)).

⁹ According to the administrative terminology used in Azerbaijan, the “bodies exercising executive power” are “authorities” rather than local governments (or municipalities). Although “local authority” is a generally accepted concept in the technical language used in the bodies of the Council of Europe for local governments, this term is not employed in this report for municipalities in order to avoid any misunderstanding. The term “local executive authorities” is applied by this report to the local units of state administration and not to the municipalities.

¹⁰ See the Opinion of the Committee of Regions 2011/C 104/04 on “Local and regional government in Azerbaijan and the development cooperation between Azerbaijan and the EU” on the point 6 “Notices two parallel systems of governance at the local level in Azerbaijan. ...”

22. The ambiguous and inadequate definition of local self-government has been repeatedly criticised by various Council of Europe bodies. For example:

- Resolution 1305 (2002) of the Parliamentary Assembly on the honouring of obligations and commitments by Azerbaijan already expressed the Assembly's regrets concerning the absence of progress in the development of local self-government in Azerbaijan, calling upon the Azerbaijani authorities "to proceed with adapting their legislation to the principles of the European Charter of Local Self-Government as well as to define and implement a genuine decentralisation strategy"
- Recommendation 126 (2003)¹ on local and regional democracy in Azerbaijan drew attention to the need to make considerable efforts to bring the legal definition of local government into line with the requirements of Articles 2 and 3 of the Charter, making concrete proposals for their implementation;
- the Venice Commission, in its Opinion on the Draft Amendments to the Constitution of the Republic of Azerbaijan (CDL-AD(2009)010) stated that the new Article 146(l) of the Constitution "(did) not seem sufficient to ensure that local self-governments will be able to regulate and manage a 'substantial share of public affairs' under their own responsibility".

23. Despite all these conclusions and recommendations made by the Council of Europe, the authorities of Azerbaijan have not revised the relevant provisions of the Constitution and the Law on the Status of Municipalities. In the meetings with the delegation, no indications were provided about their possible intentions or processes to consider and implement recommendations made in 2003.

24. While the Law on the Status of Municipalities has a key role in regulating local governments, some 30 other laws relate to their operation, such as the Law on Municipal Services, the "Model Municipal Charter", and laws on the "Transfer of Assets to Municipalities", on the "Municipal Territory and Lands", on the "Basis for the Finances of a Municipality", on the "Standing and Other Committees of a Municipality", on the "Status of Municipal Councillors", etc. There are also other laws that affect the activities of municipalities, such as laws on urban development, the real-estate market, protected natural areas and assets, etc. It should be noted that most of them have not changed much in the past few years.

25. It should also be noted that some important issues for municipalities are not regulated. For example, the Congress delegation did not find any detailed rules relating to the forms and methods of central government supervision of municipalities, criteria for allocating central government grants to municipalities, the legal guarantee of the right of municipalities and their associations freely to join international associations, etc.

4. ADMINISTRATIVE DIVISION OF AZERBAIJAN

4.1. State administration and the municipal level of local self-government

26. As mentioned above, the Constitution declares the Republic of Azerbaijan to be a unitary state. Only the Nakhchivan Autonomous Republic has a special legal-administrative status within the country (see 4.2).

27. The Constitution does not contain explicit provisions on regional or local public administration, and only Article 124 on local bodies with executive powers seems relevant here. According to this article, executive power is exercised by the heads of local executive bodies. The scope of responsibility of these bodies is determined by the President of Azerbaijan, who also appoints the heads of these bodies. The most important legal instrument defining the scope of activities, organisational structure and powers of local executive authorities was approved by the President in the same year as local self-governments were established in Azerbaijan (1999). The president's key position in determining the tasks and responsibilities of the executive authorities makes for a curious legal situation because it is unclear how law-making powers are divided between the parliament and the president when it comes to defining the powers and duties of public authorities in the field of overall public administration.

28. According to the national authorities: "there is only one administrative region in Azerbaijan, namely the Nakhchivan Autonomous Republic. The creation of other administrative regions is not envisaged". The state administration is a centralised system under the president, in whom the entire executive power is vested. It is divided into the Nakhchivan Autonomous Republic, an autonomous region in the Republic of Azerbaijan, 65 districts (rayons), 69 cities (şəhər), 13 city districts, 130 urban villages and

4354 villages¹¹ According to the State Statistical Committee the territorial units of Azerbaijan are 66 districts, 77 towns, 13 city districts, 257 settlements, and 4261 rural settlements.¹²

29. The capital city, Baku (*Bakı*) is divided into 11 administrative districts (*rayons*), (Binagadi, Khazar (former Azizbekov), Khatayi, Garadagh, Narimanov, Nasimi, Nizami, Sabunchi, Sabayil, Surakhany and Yasamal), 5 urban settlements and 52 small municipalities. Among the Council of Europe member states, Azerbaijan is the only one with a capital city governed by an unelected managing body and not by an elected municipal government. Despite the fact that the first monitoring report on the situation of local and regional democracy in Azerbaijan proposed the establishment of a unified and democratically elected municipal government for Baku in 2003 and some other Council of Europe bodies recommended the same, no progress has taken place on this issue. Indeed, the Congress delegation was informed that senior officials of the Baku executive authority and the central government reject this idea for various reasons. For example, they referred to the president's exclusive power to determine the tasks of executive authorities, which means that the parliament does not have the power to take responsibilities away from the Baku executive authority. The rapporteurs therefore wonder whether this situation complies with European democratic standards.

30. Some interlocutors told the rapporteurs that the special situation of Baku does not make it possible to transform the administrative system of the capital city. The Congress delegation was informed that the central authorities are considering (only) setting up a co-ordination committee with the participation of representatives of municipalities in the Baku area (see section XI below on the status of Baku). The rapporteurs call to mind that Article 5.9 of the law of the Azerbaijan Republic on territorial structure and administrative territorial division states that a law on Baku city must be adopted.

31. However, the capital city is not governed by a democratically elected municipal government accountable to its population. In addition, the division of powers and duties between the various players is not entirely clear. While road maintenance, for example, generally falls within the scope of responsibility of the Ministry of Transport, the executive authority of Baku is in charge of major roads in the capital, and presidential decrees provide for the repair of roads. In some cases, functions are shifted between the municipalities and the Baku executive. For example, responsibility for waste disposal was delegated to the municipalities for a few years until the executive authority took it back.

32. The legislation of Azerbaijan provides for the merger of municipalities based on the voluntary principle. The government has twice introduced changes to the legislation on "Joint activities and the merger, separation and abolition of municipalities" and simplified the procedure in order to encourage voluntary mergers. The delegation was informed that, although the government initially chose to apply the voluntary principle to mergers of municipalities, it was forced to move to merging them by administrative means given the failure of the voluntary mechanism. As a consequence of the informal instructions that municipalities received, "voluntary" hearings were held to take a decision on a merger with other municipalities.

33. After the decisions were made at hearings, those that wished to merge applied to the parliament, which adopted relevant laws¹³ to reduce the number of municipalities (*bələdiyyə*) from 2757 to 1718. Around 1044 municipalities were abolished and 5 new ones formed, which means a net reduction by 1039, or 38%. As local experts explain, one municipality may have 2, 3 or 4 villages, and the big villages may have 1 or 2 municipalities.

34. The mergers took place among the village municipalities and covered a large part of the administrative territory of Azerbaijan. No mergers were carried out in the large cities, such as Ganja, Sumgayit, Shirvan, Mingachevir and Naftalan, and the municipalities of Absheron, Agdam, Gabala and Agstafa were not affected. The biggest reduction in the number of municipalities was in northern and southern areas of the country. In the northern districts of Guba, Gusar and Devechi, the number of municipalities decreased from 277 to 122 and in the southern districts (Astara, Masalli, Lenkoran and Lerik) from 381 to 147.

¹¹ Source: website of the President of Azerbaijan: http://president.az/index_en.jsp?mod=article&article=3263&catalog=22-2

¹² Source: the State Statistical Committee of the Republic of Azerbaijan, http://www.azstat.org/statinfo/demographic/en/AP/AP_1.shtml

¹³ Law on the "Creation of new municipalities through the merging of municipalities" and Law on the "Creation of new municipalities through the merging of municipalities in the Nakhchivan Autonomous Republic".

35. In their comments sent to the rapporteurs, the Azerbaijani's authorities indicated that on the contrary the "Adoption in 2008 of the law considerably simplified the procedure of merger of municipalities and opened real opportunities for more reasonable realisation of initiative of merger of municipalities. In 2009 local population entitled to voting gathered together and proposed an initiative for merger of municipalities. As a result, by initiative of the chairs of municipalities, 2,401 meetings with participation of more than 401,000 citizens entitled to vote were held in 1,960 residential places of 1,570 municipalities in 46 cities and regions, and decisions on merger were taken."

36. Every municipality is a system of managing the citizens' lives. Section 2 of the above-mentioned Law on the Status of Municipalities states that "municipalities are forms of local self-government within a territory defined by the law" (see paragraphs 18 and 19 above). Each municipality has a directly elected council, and there are over 22,000 elected local councillors in all, except for the largest cities, Baku, Ganja, Sumgayit and Shirvan, which are made up of a number of small municipalities. Only Baku, the capital, and Ganja, the second largest city, are divided into districts, which are local executive authorities subordinate to the city executive.

37. Local government boundaries are determined by the Law on Municipal Territories and Lands. According to the Law on the Status of Municipalities, the determination of or changes to municipal boundaries and the determination of and changes to municipal boundaries after municipalities have been established, consolidated, separated, re-established or abolished, are laid down by law, taking into consideration their socio-economic situation, historical and other local conditions and the opinions of the relevant territory's population. All municipalities in the Republic of Azerbaijan have to be included in the State register of municipalities controlled by the parliament and are entitled to the relevant certification.

38. It should be noted here that some studies on the situation of local democracy in Azerbaijan refer to the law on "Joint Activity, Association, Division and Termination of Municipalities" as containing some relevant provisions on the dismissal of existing elected bodies (and calling for new elections), but the Congress delegation did not have access to that law in English.

39. There is no formal hierarchical relationship between the municipalities and the respective local executive bodies,¹⁴ even though administrative territories frequently overlap. Nonetheless, many experts and stakeholders interviewed by the Congress delegation reported on the informal influence of the executive authorities over municipalities. As the delegation was clearly told by the Mayor: "*local governments cannot take a breath without the approval of the executive body*". Some sources refer to the practice whereby local executive authorities ask municipalities to report on a regular basis on the sale of land and on their financial situation, without there being any legal basis for this. The alleged informal influence is rooted in the unbalanced powers and abilities of these bodies (in favour of local executive bodies).

40. Nevertheless, the relationship between the municipalities and the local executive authorities is unclear: although the Congress delegation heard about some co-ordination committees consisting of representatives of the municipalities concerned, the local executive bodies and representatives of Sumgayit and of the members of the Mardakan municipal council said that they had no direct permanent connection with the respective local executive authority.

4.2. Regional governance

41. In Azerbaijan, there are no regional governments. All regional public authority is exercised at the central level, and/or by the district authorities of the state administration. In such a highly centralised system, the mere existence of administrative districts might appear to be an obstacle to any democratic regionalisation process. Nevertheless, the traditional centralism of the country and the weakness of the existing local government system are probably the most significant obstacles to the establishment of an effective territorial tier of government based on democratic elections. In the absence of territorial government, the fulfilment of regional tasks and functions suffers from a democratic deficit, since no effective control can be exercised by the citizens over these processes.

¹⁴ See above para.18-19

42. The need for regional (or any second-tier) governance can be demonstrated by the country's process of economic regionalisation, 10 economic regions having been formed since the previous monitoring report. This being said, the delegation was told that there is no particular will towards more regionalisation in Azerbaijan (cf. para 28).

4.3. The special status of the Nakhchivan Autonomous Republic

43. The Nakhchivan Autonomous Republic is surrounded by Armenia, Iran and Turkey. Basically, the geographical location justifies the special legal-administrative status of Nakhchivan as an autonomous republic in Azerbaijan.

44. The constitutional or legal status of the Nakhchivan Autonomous Republic is determined by the Constitution of the Republic of Azerbaijan (adopted by referendum in 1995, Chapter VIII), by the Constitution of the Nakhchivan Autonomous Republic¹⁵ and by two international treaties (Moscow and Kars, respectively signed on 16 March and 13 October 1921 and still in force). The status of the Nakhchivan Autonomous Republic is accordingly defined by both national legislation and international treaties.

45. The Nakhchivan Autonomous Republic has a parliamentary system. The regional parliament is the *Ali Majlis*, a 45-member legislative assembly with a five-year-term.

46. According to the Constitution, the highest official of the Nakhchivan Autonomous Republic is the Chair of the Ali Majlis (Supreme Assembly), who exercises powers granted by the Constitution and represents the autonomous republic in Azerbaijan's international relations within the limits established by the Constitution of the Nakhchivan Autonomous Republic and under the rules set out in the laws of the Republic of Azerbaijan.

47. According to Articles 138 and 139 of the Constitution, the Ali Majlis of the Nakhchivan Autonomous Republic establishes general procedures concerning the following: elections to the Ali Majlis; taxes; paths to economic development in the autonomous republic; social care; the protection of the environment; tourism; and the protection of health, science, and culture. It also takes decisions on the following matters: the organisation of the proceedings of the Ali Majlis; the approval of the autonomous republic's budget; the approval of the autonomous republic's economic and social programmes; the appointment and dismissal of the autonomous republic's Prime Minister; the approval of the composition of the autonomous republic's Cabinet of Ministers; and decisions concerning a vote of confidence in the Cabinet of Ministers.

48. The Cabinet of Ministers of the Nakhchivan Autonomous Republic is the high executive power. It is subordinate to the Ali Majlis and reports regularly to it.

49. The territory of the Nakhchivan Autonomous Republic is divided into 7 administrative divisions called districts or *raions* (Sharur, Babek, Ordubad, Julfa, Shahbuz, Kangarli and Sadarak) and the city of Nakhchivan, the capital of the autonomous republic. The status of these administrative *raions* is determined by legal instruments of the Republic of Azerbaijan. The administrative supervision of these *raions* is exercised by government bodies of the Nakhchivan Autonomous Republic. According to the present legislation, the chief executives of the administrative *raions* are appointed and dismissed by the President of the Republic of Azerbaijan on the recommendation by the Supreme official of the Nakhchivan Autonomous Republic (namely, the Chairman of the Supreme Majlis of Nakhchivan Autonomous Republic).

50. In the Nakhchivan Autonomous Republic there are 171 municipalities.

51. The delegation was informed by the representatives of the Ali Majlis that the expenditure structure of the budget of the Nakhchivan Autonomous Republic in 2011 was as follows:

- 23% - costs related to education, science, healthcare, culture, sport and other social sectors;
- 12% - administrative costs;
- 3% - housing costs;

¹⁵ According to Article 1 of the Constitution of the Nakhchivan Autonomous Republic: "The Nakhchivan Autonomous State is a democratic, legal and secular autonomous republic within the Republic of Azerbaijan".

- 5% - agricultural and environmental costs;
- 57% - infrastructure costs (general construction, construction of roads, etc) and costs related to other areas of the economy.

52. The representatives of the Nakhchivan Autonomous Republic said that a total of 34% of the state budget was allocated to social and social protection expenditure in 2011.

53. According to the Azerbaijan Tax Code, the taxes of the Nakhchivan Autonomous Republic are made up of:

- Personal income taxes
- Taxes on the profits of legal entities (except for municipally owned enterprises and organisations)
- Value added tax
- Excise duties
- Property taxes on legal entities
- Road tax
- Mining tax
- Simplified tax
- Land tax of legal entities.

54. The autonomy of Nakhchivan extends to the approval of the budget, the state's economic and social programmes and some institutional matters.

4.4. Local elections

55. According to Art. 142(II) of the Constitution, all municipalities have an elected council. The detailed rules of municipal elections are determined by law, namely the Electoral Code of 11 November 2003, which has been amended several times.

56. Municipal councils are elected in general, direct, free, equal, and secret elections in which as a key rule, all residents who have attained the age of 18 are entitled to vote. Those at least 21 years old and living permanently in the relevant constituency may be elected as a member of the respective local council. The term of office of local councillors is 5 years.

57. Municipal councillors are elected in multi-mandate constituencies under by a relative majority voting system. The number of councillors depends on the size of the municipality's population and varies from 5 to 19. Altogether, more than 20,000 local councillors are elected in municipal elections.

58. The first municipal elections were held in December 1999, since when two others have been organised (in 2004 and 2009). The turnout at local elections held in 2009 was about 32%, which was much lower than at the previous elections on 30 November 2011.¹⁶ All municipal elections so far have been criticised by international and domestic observers for not meeting the European standards of free and fair elections. For example, the Council of Europe delegation, which was invited by the Azerbaijani authorities and appointed by the Congress to observe the last local elections, held in December of 2009, concluded¹⁷ that, whereas the elections were well prepared in technical terms, serious concerns had arisen, such as the lack of a pluralistic party landscape, the scarcity of real candidates from non-government parties, the absence of a truly competitive election campaign, some problems with the registration process and vote counting and the under-development of political life at local and regional level.

5. MAIN POWERS AND RESPONSIBILITIES OF LOCAL AUTHORITIES

59. The tasks and functions of municipalities are determined by the Constitution, the Law on the Status of Municipalities and some other legal instruments.

¹⁶ There were re-run elections in 330 municipalities in 86 precincts. According to official data, only 271108 voters took part i.e. a turnout was 23.46%

¹⁷ Recommendation 284 (2010)¹, Municipal elections in Azerbaijan (23 December 2009), and Resolution 300 (2010)¹, Municipal elections in Azerbaijan (23 December 2009).

60. Municipalities may, in theory at least, exercise delegated powers of state administration, assuming that the wording of Art. 144(II) of the Constitution, “additional authorities with legislative and executive powers”, refers to them. When municipalities perform such tasks, “respective financing is required”, which seems, albeit imprecisely, to refer to the requirement of concomitant financing enshrined in Article 9 of the Charter.

61. One of the areas of municipal administration is social protection. In the case of this range of functions, municipalities may implement local social protection and social development programmes and may provide social assistance for poor people and other individuals in need. Since social service and welfare programmes are also announced and regulated by presidential decrees, municipal programmes have to be adapted accordingly. As most social tasks are implemented and most social welfare services are delivered by the local executive authorities of the state administration, the services provided by the municipalities are only “supplementary” in nature and local social programmes may be aimed only at resolving social development issues not covered by the state social development programmes. It is explicitly laid down in the Law on the Status of Municipalities that “in implementing local social protection and social development programmes, municipalities must not interfere with the implementation of programmes by the state”. Municipalities do not receive any central government grants or contribution to their own local social service programmes.

62. The same can be said about the local economic programmes agreed by municipalities. Although these programmes may cover such fields as agriculture, industry, communication and transport, they must not interfere with the extensive activities of state administrative entities.

63. In some cases, municipalities are involved in the implementation of central development projects, such as certain constructions or the use of water resources. There are some local tasks that are typically fulfilled by municipalities, like the maintenance of local roads (although it is not always clear which roads exactly are “local”) and cemeteries.

64. The Law on Status of Municipalities empowers municipalities to undertake certain¹⁸ kinds of local services, such as the cleaning of and improvements to the municipal area, the collection, transportation and recycling of waste products or the protection of water, air and land from all types of pollution. Nonetheless, Article 12 of the “Law on manufacturing and residential wastes” and the Article 6 on “Guideline of cleaning the residential areas...” states that it is local state executive bodies which are in charge of the transportation and processing of residential wastes. The same situation exists in the field of running water supply and sewage network. This situation is due to the absent legal mechanisms governing the relations between municipalities and local state executive bodies, as well as the overlapping of responsibilities of the municipalities and the local executive bodies of the state administration. As mentioned above, they both have functions in the fields of waste disposal, water supply management or sewage. Since municipalities must not interfere in matters for which the local executive bodies are responsible, they are at a disadvantage whenever a conflict of responsibilities arises. For example, they can often only carry out residual tasks and functions. Other problems arise from the municipalities’ insufficient financial resources, which prevents them from delivering better services. The lack of proper finance prevents local governments from improving their work in certain areas formally open for them, such as undertaking local public initiatives in education, healthcare and culture or the maintenance and development of sanitary facilities, etc. Furthermore, some independent sources¹⁹ and the direct experience of the Congress delegation show that the relationship between the municipalities and the respective local executive authorities can be described as the dominance of the latter or the dependence of the former. Since the local executive authorities of the state administration have a parallel structure with the municipalities, and have much greater capacities in terms of personnel, finance and formal powers, they can presumably exercise informal control or influence over local governments.

¹⁸ See the Opinion of the Committee of Regions 2011/C 104/04 on “Local and regional government in Azerbaijan and the development cooperation between Azerbaijan and the EU” on the point 7 “is concerned with the very limited number of responsibilities allocated to municipalities by the law. In practice their responsibilities are even more limited and at best are related to the maintenance of municipal roads, cemeteries, parks and some aspects of the delivery of social care that are not covered by the central government. Municipalities in most cases do not have adequate capacity, training or knowledge to carry out those limited responsibilities prescribed by law”

¹⁹ See report BINA, NGO Alliance for Municipal Development

65. In reviewing municipal tasks and functions, it seemed to the rapporteurs that many local public matters were not regulated and managed by the municipalities. In theory, most local public services, such as social welfare, public health, education, housing and town planning, public transport, road maintenance, public utilities, municipal services and environmental protection, are not delivered by them, but by the local (*rayon*) units of state administration. Even when local governments have some functions, such as social benefits or public sanitation, most of these tasks are fulfilled by local organs of the central government. All important issues affecting the life of the local communities are decided by the centralised state administration rather than the elected representatives of these communities. It is really strange that local councils are elected to carry out such a small range of municipal responsibilities.

66. Some powers for municipalities are provided by the Constitution and the relevant laws, including the right to impose local taxes and levies, which is – in theory – the most important.

67. Surprisingly, it is not clear whether municipalities have regulatory powers or not, and the situation is also ambiguous with regard to the legal-administrative status of municipalities. Although the Constitution empowers municipalities to enact legal instruments that are binding on citizens and legal entities in their territory, these are not listed as statutory instruments forming part of Azerbaijan's legal system.

68. Local governments may adopt their own municipal code. This code regulates, within the limits of the law, the formation and functions of municipal bodies and their officials, and the principal rules of operation of these bodies.

69. Municipalities may approve their budget and possess, use and dispose of municipal property. They are entitled, as determined by law, to levy municipal taxes.

70. The delegation was informed by the representatives of the *Milli Majlis* about the current debates on the draft Law on Granting Municipalities Additional Powers, which has had its first parliamentary reading. The rapporteurs were told that this law, if it is passed, will clarify the respective powers and responsibilities of local executive bodies and municipalities and eliminate all risk of overlap.

71. The Congress rapporteurs expect to see well-defined powers and responsibilities in this new draft, with commensurate finances as provided for by Article 9 of the Charter.

72. Unfortunately, on 6 June, 2012 the rapporteurs were sorry to learn that the President of Azerbaijan had signed a decree on the approval of the regulations concerning local executive authorities which, in their opinion, might undermine the authority of municipalities. This provides local executive authorities with almost all the functions of local government, including those that under other laws would fall within the scope of the powers of municipalities. The delegation expresses its concern that this decree minimises the authority of Azerbaijan's municipalities even more, and reinforces the trend towards greater centralisation.

6. THE ORGANISATIONAL STRUCTURE AND DECISION-MAKING PROCESSES OF LOCAL AUTHORITIES

73. The basic rules on the internal organisational structure of municipalities, as well as on the working methods are enshrined in the Constitution and specified by the Law on the Status of Municipalities. The law on the "Model Municipal Charter" provides municipalities with a template for matters common to all of them to be incorporated in all municipal charters, such as territorial boundaries, municipal councils, standing and other committees, executive bodies and administrative procedures. According to the law, all municipalities have a municipal charter determining their organs and functions and the most important rules of procedure.

74. The legislative and deliberative body of a municipality is the municipal assembly or council, which consists of elected local councillors. As mentioned above, the number of council members depends on the size of the local population and is defined by the Electoral Code. It varies from 5 (in a place with a population of less than 500 inhabitants) to 19 (in a place with more than 100,000 inhabitants). The term of office of local councillors is 5 years. Although no official data are available on the representation of political parties on local councils, the Congress delegation was told that there was a low level of representation of political parties at local level and the vast majority of councillors were

independent (did not belong to any parties). There is no information about the existence of political parties with a local interest.

75. Although municipal council members may not be municipal employees, this restriction does not apply to working for the offices of the respective municipalities, and some local councillors are frequently employed and paid by the municipality as quasi civil servants of the municipality. Their number was limited by law in 2011 (precise details of the law to be inserted).

76. The council is presided over by the chair, who is elected by the council from among the municipal councillors. Although the Law on the Status of Municipalities enumerates a number of cases in which the chair can be removed from office, it does not specify the dismissal procedure. Paradoxically, while the chair of the council is not referred to as the “mayor” by law, the head of the Baku executive authority is commonly called the “mayor” even though the capital, as pointed out above, does not have its own local government.

77. Municipalities may establish standing and other committees in order to prepare in advance and review matters within their responsibility, assist the municipal assembly to implement its decisions and supervise the activities of municipal enterprises and organisations. Nevertheless, decisions on some issues are the responsibility of the municipal council, such as important organisational and personnel matters or the imposition of local taxes and levies.

78. The executive body of a municipality is referred to by law as the “*executive apparatus*”. It consists of the municipality’s executive departments in accordance with the municipal charter and is managed by the chair of the municipal council, who appoints the chief official. Many sources report that the vast majority of municipalities, in particular in rural areas, do not have sufficient well-trained staff capable of preparing and executing the council’s decisions. Even in the municipality of Mardakan, which is in a relatively good financial position compared to other municipalities, only 4 people are employed full-time at the local government offices, even though the council has 13 elected members.

79. As far as the main operational rules are concerned, meetings are convened by the chair. The council takes its decisions by a simple majority of voting councillors, with the exception of decisions on local taxes and levies, for which a two-thirds majority is required.

7. LOCAL GOVERNMENT FINANCE

80. The world economic crisis has had a modest effect on Azerbaijan”, the Minister of Justice told the rapporteurs. On the contrary, he pointed out that the amount of grants allocated to municipalities in 2012 has considerably increased from 3.5 million manats (1.5 million US dollars) to 5 million manats (6.4 million US dollars) and is about 42% higher in comparison to 2011. In his opinion, this trend is expected to continue. The merger of 1651 municipalities in 2009 also created conditions for a considerable saving of financial resources. The Minister stressed that local budgets experienced considerable growth in these years of crisis, as the following figures show: funds allocated to municipal budgets throughout the country in 2010 were 28.873 million manats (37 million US dollars) and increased by 18% to 34.110 million manats (43.4 million US dollars) in 2011.

81. This was confirmed by the elected representatives of Mardakan, who also told the delegation that no negative effects of the economic crisis had been noted in the municipality of Mardakan.

7.1. The financial position of municipalities

82. The Constitution of Azerbaijan empowers the municipal councils to impose local taxes and levies, to approve local budgets and to possess, use and dispose of municipal property (Art. 144(I)). Chapter V of the Law on the Status of Municipalities contains detailed rules on the “*economic basis of local self-government*” and specifies the financial resources of municipalities, the conditions of their economic activity and their financial and economic management rights. The law on the budget system of Azerbaijan guarantees the independence of municipalities with regard to preparing, approving and spending their own local budgets and enshrines the key principle that legislative and executive authorities must not interfere with the budget activities of the municipalities.

83. Despite the formal guarantees of the economic basis of local government autonomy, Azerbaijan's municipalities are in an extremely weak financial position. Total municipal revenues in 2012 are 35 million manats (the euro-manat exchange rate was 1 to 1.01 in May 2012), which means that average per capita municipal incomes amount to 3.2 manats. Total local government revenues are less than 0.2 per cent of the consolidated state budget. In fact, the extremely low level of municipal revenues is apparently insufficient even to fulfil the municipalities' very limited tasks and functions.

7.2. Local revenues

84. The aforementioned laws specify local revenues. As mentioned above, the right to impose taxes and levies is in theory one of the municipalities' most important powers. Having said that, and although a number of resources are indicated, only a few of them have any real significance.

85. Despite the existing legislation (provisions of the Tax Code on local taxes and levies, laws on the financial basis of municipalities and the budget system), a great majority of these sources of income do not in practice help to form sustainable sources of high revenue for municipalities.

7.2.1. Municipal taxes and levies

86. According to the Azerbaijan Tax Code, the taxes imposed in the territory of Azerbaijan are: state taxes, local (municipal) taxes and taxes of the autonomous republic.

87. The state taxes are:

- Personal income taxes
- Taxes on the profits of legal entities (except for municipally owned enterprises and organisations)
- Value added tax
- Excise tax
- Property taxes on legal entities
- Road tax
- Mining tax
- Simplified tax
- Land tax of legal entities.

88. Local (municipal) taxes are:

- Land taxes on private individuals
- Property taxes on private individuals
- Mining tax on construction materials of local importance
- Taxes on the profits of municipally owned enterprises and organisms.

89. Local (municipal) levies are:

- levy on posting of street advertisements in the municipal owned territories, buildings and other premises
- levy on disposal and letting of the municipal property
- levy on fixed and mobile commerce, public catering and other services in the territories under ownership of municipalities
- levy on hotels, sanatoria and health resorts and persons providing tourist services in the territories under ownership of municipalities. This levy is identified as not more than 1.1 AZM/24 hours per person.
- levy on parked cars in specialised parkings owned by legal and physical persons in the municipal territories. This levy is identified as not more than 0.1 AZM/24 hours per vehicle

90. According to the statistics for 2011 provided by the Minister of Taxes, the share of local taxes in the tax revenues of the state budget was 0.25%.

91. According to information provided by the Azerbaijan Ministry of Taxes, in 2011 the municipalities' budget income was 34.1 million manats and their budget expenditure was 33.1 million manats. Local budget incomes consist of:

- tax revenue of 13.74 million manats,
- non-tax revenue of 20.14 million manats and
- other income amounting to 897,000 manats.

92. Of the total amount of taxes, 7.45 million manats was land tax paid by private individuals, 4.4 million was property tax paid by private individuals and 446,000 was mining tax imposed on locally important construction materials. 16.3 million manats of the non-tax revenue derived from privatisations and land rents and 3.4 million from grants allocated from the state budget.

93. The Minister of Taxes also informed the delegation that the average share of local taxes in the revenues of the state budget for 2011 was 0.09%.

94. As mentioned above, the most important municipal tax is the land tax levied on private individuals who own or use plots of land in the territory of the respective municipalities. The delegation was informed by local NGOs that the land tax had not changed over the past 10 years.²⁰ However, national authorities stressed in their written comments to the rapporteurs that on the contrary, that “The land tax was introduced by the Law on amendments to the Tax Code of the Republic of Azerbaijan on 15 December, 2006. Accordingly, under the amended Article 206 of the Code, the categories of land tax have been increased”. The second-largest revenues derive from the property tax, which is paid by both resident and non-resident citizens who own buildings or flats. Nevertheless, it is notable that about 85% of this tax revenue is collected in five big cities (Baku, Ganja, Sumgayit, Mingachevir and Shirvan). The revenue from this municipal tax amounted to 9.3% of all local income in 2010, 12.7 % for 2011. The other local taxes – the tax on the profits of municipally owned organisations and enterprises the mining tax – and the duties and fees imposed by the municipalities amount to about 4.5% of local revenues.

95. In spite of the legal entitlement, municipal taxes are not imposed, or not collected in an efficient way, owing to the poor human resource situation of local governments. Their shortage of staff and equipment, and their lack of expertise make it impossible to exercise their right to levy taxes. Administrative shortcomings, such as the absence of a reliable registry of private homes for the imposition of property taxes, may also make it difficult to obtain sufficient resources. The rapporteurs consider that this situation, which could be described as a “sleeping potential”, obviously deprives the local authorities of a substantial proportion of their potential revenues and that measures to remedy the tax collection procedure should be implemented as quickly as possible.

7.2.2. The use of municipal property, economic activities and other revenues

96. Recommendation 126(2003) of the Congress deplored the lack of municipal properties (especially in Baku) and the incomplete process of transferring powers from state bodies to municipalities in spite of the presidential decree.

97. According to the Constitution of Azerbaijan there are three main forms of property: state property, municipal property and private property. When local governments were set up in 1999, the *Milli Majlis* passed a law on the transfer of properties to municipalities and provided land and other types of property. The land forming part of the property transferred from the state to municipalities is specified in the List of Municipalities of the Republic of Azerbaijan annexed to the Law on Lands and Territories of Municipalities. The law laid down the transfer to municipalities of the state-owned utilities, social and cultural premises necessary for them to carry out their tasks and functions, in the manner specified. According to the definition provided by the Law on the Status of Municipalities, municipal property consists of “assets of the local budget created from local taxes and payments; municipal non-budget funds; municipal land; municipal enterprises and organisations; the municipal housing stock and buildings other than dwellings; roads that do not belong to the state or are personal property; municipal educational, health, cultural and sports organisations, and other movable and fixed property” (section 33(1)). The law also recognises the municipalities’ right to exercise property rights in respect of all municipal properties, including the right to lease and privatise them in accordance with the rules laid down.

98. Recently, as mentioned during the visit, the government has enacted several laws to determine the boundaries of both state and municipal properties. On 10 February 2010, the President signed a decree authorising the application of the law of the Republic of Azerbaijan on “the State registry and

²⁰ BINA Report concerning “Assessment of conformity of organizational and operational aspects of municipalities in Azerbaijan with principles and requirements of European Charter of local self-government”, Baku 2011, Para 2 “Financial resources of local-self-government in Azerbaijan”, page 19.

provision of municipalities with proper certification". The decree provides that the State Land and Mapping Committee must draw up and submit maps of the municipal lands to the body in charge of the State Registry of Municipalities by 1 January 2013. These maps, drawn to different scales, must cover the settlements, their titles, post offices, railways and highways, rivers, waterways and water collectors, major oil and gas pipelines, railway stations and state-owned, municipal and private land. They must also show the areas close to municipal boundaries and indicate the size of the municipal territory.

99. According to independent sources, many problems have arisen during the process of transferring property to municipalities, which has not yet been completed. Not only the slowness of the transfer has caused difficulties but also the lack of precise data to identify and define the boundaries of municipal property, in particular municipal land. Many problems also stem from the insufficient resources made available to municipalities. As an example, the conflict between the Quba regional executive power and Quba municipality last March ended with a riot of the local population, very critical of the low prices proposed by the municipality for land plots, a situation described by the head of Executive power as "selling the Motherland". The trial has not yet started, but the official version is that the riot was organised by the Head of Municipality, Elkhan Aliyev, with local media assistance. Elkhan Aliyev was arrested on 16 March charged under Articles 233 (organisation of actions that led to the disruption of public order) and 309 (2) (abuse of power) of the Criminal Code. Although it was already criticised in the first monitoring report in 2003, the majority of municipalities, especially those in rural areas, are still in a poor financial situation of municipalities, which is also a serious obstacle to their use of their municipal property as they do not have enough funds to manage these assets.

100. In theory, municipalities have the right to obtain money from raising loans, but their poor financial situation makes this possibility unrealistic because the low level of their financial resources means they cannot take on any additional financial burden in the form of loan repayments.

7.3. Central government grants and financial equalisation

101. According to the Law on the Budget System, municipalities may receive subsidies and grants from the state budget when it is impossible to finance local social-economic development programmes from local budget funds. Another provision states that a proportion of the local budget expenditure can also be covered by central government subsidies if it is secured by municipal revenues (i.e., the local budget deficit).

102. In Azerbaijan, central government grants play only a negligible role in local government finance. In 2010, 13.3% of total local revenues came from state budget transfers in the form of block grants, amounting to no more than to 2.2 thousand manats per municipality. In 2012, 5 million manats is allocated among all municipalities as central government grants. The criteria laid down in the law, for distributing state transfers for municipalities are not clear, and the entire allocation process is therefore not transparent. This was confirmed by some interlocutors met during the meetings held with the delegation. The Law on the Budget System only states that the number of local inhabitants, the municipalities' share in the generation of the country's financial resources "as well as other factors may be taken into consideration". This causes some concerns because independent studies show that these transfers are distributed unevenly between the various districts and municipalities.

103. In addition to the block grants, special grants ("targeted funds") can also be allocated from the state budget for specific purposes. There are no data available on the amount and form of these subsidies either. During their visit, the rapporteurs were assured that it was possible for individual municipalities to request special (or occasional) financial support from the central government provided that the central authorities were convinced that those requests were well founded. Although this mechanism might provide some municipalities with extra resources, this kind of central government support does not increase the transparency of the financial system as a whole.

104. The Constitution seems to recognise the principle of concomitant financing when it states that "respective financing is required" when municipalities implement "additional" powers that have been delegated to them (Art. 144(II); section 32(3) of the Law on the Budget System). In addition, the law also guarantees that if the revenues of municipalities fall or their expenditure rises as a result of the decisions taken by executive authorities, the executive authorities that take such decisions have to compensate them with increased amounts. In spite of these formal guarantees, when local governments fulfil the functions of local executive bodies they usually do not receive any central government support. Thus, when the executive authority was given the task of waste disposal in Baku

about two years ago, the municipalities did not receive any central government contribution to carry out this function, which raises some concern as to whether or not the principle of concomitant financing applies in practice.

105. In the light of the considerable regional discrepancies in the various regions of the country, it is surprising that no financial equalisation system exists to compensate for them or to help those municipalities in a difficult situation. However, as we have seen, the Law on the Budget System provides the legal basis for covering local budget deficits from the state budget but the mechanism for carrying out this process is not standardised and is unpredictable.

8. SUPERVISION OF MUNICIPALITIES AND THE PROCEDURE FOR CONSULTATIONS BETWEEN CENTRAL GOVERNMENT AND MUNICIPALITIES

8.1. Central government supervision of municipalities

106. The Constitution provides that the state shall supervise the activities of municipalities but the text does not specify what kind of supervision is exercised over local governments. The Law on the Status of Municipalities clarifies the nature of the administrative supervision of the activities of municipalities and lays down that the relevant executive body must monitor compliance with the Constitution and laws by municipalities, municipal bodies and municipal officials. Similarly, the Law on the Administrative Supervision of Municipalities states that the purpose of the central government supervision of municipalities is to guarantee the compliance of municipalities and their officials with the country's Constitution and laws. Pursuant to these rules, the supervision extends to overseeing and checking the legality of the work and actions of municipalities.

107. Nevertheless, the last-mentioned law also states that the supervisory body may consider any request by individuals or legal entities that claim that a municipality has caused them damage. Although no proper information is available about how this procedure is handled in practice and about the exact powers of the supervisory authority, it is a strange piece of legislation because any dispute relating to the legal liability of municipalities (such as legal claims for damages caused by their actions) should be subject to the jurisdiction of the ordinary courts.

108. The legal supervision of municipalities is exercised by the Ministry of Justice, or to be more precise the Centre for Working with Municipalities, which started operating in 1999, and, in addition to its supervisory work, provides methodological support for municipalities. Municipalities are obliged to forward their decisions no later than 15 days after the date of their adoption to the Centre for checking. In this area, the law on the status of municipalities, (Art. 52) only states that the "relevant executive body" shall exercise legal supervision over municipalities but it fails to specify which particular administrative authority is the "relevant" one. This kind of legislation may cause some uncertainty and confusion in the relationship between the various executive bodies and the municipalities. The Azerbaijani's authorities stressed in their comments that the Order of the President of 27 September 2003 formulated in application of the Law of the Republic of Azerbaijan "On administrative supervision over activity of municipalities", the competences of the "relevant bodies of executive power" are carried out only and directly by the Ministry of Justice. The delegation maintains that a detailed legal provision is necessary.

109. The financial and economic management of municipalities is monitored by the Chamber of Accounts, a body that carries out the financial supervision of the spending of state budget transfers by municipalities. It is not clear to the Rapporteurs whether this type of scrutiny also extends to the spending of local revenues and to the efficiency of local governments' financial management.

110. The Law on the Budget System contains a provision stating that if a municipality receives a subsidy from the state budget its draft budget has to be submitted to the relevant executive authority (section 35(2)). Although no relevant data are available about this mechanism, such an obligation on municipalities might result in a hierarchical relationship between them and the respective executive authority, at least informally, despite the fact that the provision specifies neither the objective of this rule nor the power of the executive authorities in this connection. In the rapporteurs' opinion, this existing/*de facto* hierarchical relationship does not comply with European democratic standards and the Charter.

111. According to the law, local governments are obliged to carry out internal audits. In this area, the Chamber of Audits plays a co-ordinating role in the country and helps municipalities to conduct these audits.

112. Another constitutional provision (Article 146 (IV)) states that municipalities are obliged to submit reports to the parliament in cases and in the manner prescribed by law. This rule was inserted into the Constitution in 2010 after a national referendum the previous year. The Law on the Status of Municipalities was amended accordingly by adding a new provision stipulating that municipalities are obliged to report to the parliament on the implementation of the additional powers assigned to them by law and on the use of state budget funds transferred to their budget by law. In its Opinion 518/2008 on the draft amendments to the Constitution of the Republic of Azerbaijan, the Venice Commission stressed that: “the rationale behind the obligation for the municipalities to submit reports to the *Milli Majlis* is unclear. It suggests some form of control by the Legislature. [...] This unusual form of supervision may undermine the independence of local self-government”.²¹ As was mentioned by senior officials of the legislature, no reports have been submitted to the parliament so far, but municipalities are expected to comply with this requirement in the near future. However, it is not clear what the purpose of this obligation of municipalities to report is. It is also unclear how the parliament will supervise the activities of municipalities in this way. At any rate, it is an unusual process that appears incompatible with the legislative function of a parliament.

113. The *Milli Majlis* informed the delegation that the parliament was working on a draft law on the procedure for the municipalities to submit the reports to the *Milli Majlis*.

8.2. Municipal associations and the consultation mechanism between central and local governments

114. In 2006, three national municipal associations, representing the interests of the various types of municipalities (villages, towns and cities), were set up. Although no exact data are available on the membership of these associations, most municipalities are said to belong to one of them. The legal basis of municipal associations is the Law on the Status of Municipalities, which states that municipalities may create associations for the purpose of co-ordinating their activities and in order effectively to assert their rights and interests. However, they may not be given the powers of municipalities and can therefore only exercise representative and co-ordinating functions. The associations must be registered in accordance with the law.

115. As far as the Congress delegation was able to gather from the relevant legislation, no legal rules provide for the right of municipalities or municipal associations to be consulted on these matters or on decisions of the central government authorities affecting local government interests. Neither the Law on the Budget System nor the Law on the Status of Municipalities contains any requirements for state authorities to consult with the municipalities in due time on all relevant issues.

116. No information is available on the effects or even the actual operation of these associations. The delegation only heard of some unspecified assistance given by municipal associations on the preparation of a local water supply project (provision of healthy water). They are not consulted on central government plans or decisions that primarily affect the interests of municipalities and presumably therefore have no regular opportunities to influence the local government policy of the central government authorities. There is no information about their services or the professional support they provide to municipalities, so it is not surprising that they do not have the proper capacity to play an important and effective role. In fact, it seems that municipal associations were only established in order to comply formally with the requirements of the Charter and that they do not engage in any real activities.

117. As mentioned above, only in the case of boundary changes are consultations required by law. However, some independent sources reported that the integration of the local government system (i.e. the reduction in the number of municipalities) in 2009 was implemented on a non-voluntary base in breach of the existing rules (cf. infra para 32-34).

²¹ See para. 37 of the Venice Commission Opinion

9. GUARANTEES OF LOCAL SELF-GOVERNMENT

118. The Constitution states that municipalities exercise their power independently, that their rights are protected by the courts and that they are entitled to the reimbursement of additional expenses caused by decisions of state bodies (Art. 146(I) and (II)).

119. The provisions of the Law on the Status of Municipalities relating to the “judicial protection of local self-government” reinforce the presumption that municipalities are not part of the system of state organisation but, rather, are a “special form of the social activity of the citizens”, as the Law states. “The rights of citizens to implement local self-government may only be limited by law and for the period defined by law and in order to protect constitutional structures and ensure the defence of the country and state security”.

120. The law also contains an elliptical provision stating that “appeals by municipalities, municipal bodies and municipal officials must be considered within one month by state bodies, political parties, public associations, trade unions, other legal persons and their officials”. This rule probably enables municipalities to submit petitions to all these institutions.

121. Stronger protection of local government interests is provided by the fact that municipalities may go to court to overturn decisions violating their rights made by state bodies or state officials. As we have seen, the municipal boundaries are also protected by law, since the territory of municipalities is fixed by statute and any change to them needs an in-depth analysis of social, economic and other conditions and the local community has to be consulted on such changes (see also paragraph 28 above).

122. Another generally accepted guarantee of local autonomy in Council of Europe member states is that municipal decisions may be set aside by the decision of a court. Municipalities may ostensibly lodge a complaint with the Constitutional Court, but the latter informed the Congress delegation that, according to the Article 130-III of the Constitution and the Law on the Constitutional Court of the Republic of Azerbaijan, the municipalities do not have this right to lodge directly a complaint to the Court. In fact, municipalities can only lodge a complaint to the Court through State institutions which undermines their right of appeal. In practice, this right is not used by municipalities and, consequently, is not an effective remedy.

10. FORMS OF DIRECT CITIZEN PARTICIPATION

123. Local inhabitants may also initiate municipal decisions on issues of local importance. Draft municipal decisions presented by the local population must be discussed at open meetings and the result of this type of consultation must be officially announced.

124. As is usual in many European countries, the law encourages the citizens’ direct personal participation in public meetings in smaller communities. For example, citizens in municipalities with less than 500 inhabitants may conduct meetings to express their opinions on issues of local importance, to propose motions, to express a collective opinion and to make decisions. These public meetings are valid if at least 25% of the local voters attend them. In the absence of detailed rules, the municipal charters once again presumably play a decisive role in regulating this procedure and its relationship with the municipal council’s decision-making powers.

125. According to the Law on the Status of Municipalities, citizens, either individually or as a group, have the right to appeal to municipalities, municipal bodies and municipal officials, who must respond to them within one month (right of petition). The rule that municipal meetings must be held in public also aims at ensuring the transparent operation of the local government.

126. The Law on the Status of Municipalities lays emphasis on the direct expression of the will of the citizens and provides instruments for and forms of direct citizen participation. For example, it states that local citizens have the right to participate in municipal elections in “a free, personal and secret ballot on the basis of common, equal and direct suffrage”. Moreover, state bodies are obliged to ensure that municipal elections are “democratic”.

127. In theory, local citizens may participate in the public life of the local community in other ways, for example by means of local public opinion surveys, which may be conducted on issues of local

importance. A local referendum may be initiated by the local council or at the request of the population. All citizens who have the right to vote and live in the respective municipality may take part in the referendum. It should be noted that the types of local referendum (e.g., compulsory or optional, mandatory or consultative) are not clearly specified in the law. As regards the consequences of the decisions of local public opinion surveys, Article 4 of the law “on local public opinion survey” which relates to “legal effect of results of local public opinion survey” states that: “municipality shall be obliged to adopt a relevant decision for the entry into force of those results. Results of the local public opinion survey shall constitute a basis for that decision. Decision of municipality shall be binding in the municipal territory”. The question remains whether this provision is, in practice, applied. None of the interlocutors was able to provide the delegation with examples in this respect.

128. The laws provide for an entire range of possibilities for direct citizen participation. These instruments serve to promote direct democracy at municipal level, in accordance with the usual functions of these institutions and procedures. Nevertheless, it is striking that no detailed rules are specified by the laws presented to the Congress delegation. Presumably, these provisions are determined by the municipal charter of the various municipalities. If that is so, no real safeguard exists to counter the emptiness of these instruments. Moreover, it would be interesting to know how often these instruments of direct participation have been applied.

129. This concern is confirmed by the studies of some Azerbaijani NGOs, which report on the lack of a lively local public life or the ineffective use of these procedures. Also of concern is the extremely limited scope of municipalities’ responsibilities. It is a fact that the more important local issues are put on the public agenda, the greater the attention of local citizens is. Consequently, if municipalities only carry out tasks that are not too important, then local citizens cannot feel involved and accordingly do not see any reason to participate in local public affairs.

11. BAKU’S STATUS AS A CAPITAL CITY

130. The governance of Baku is currently carried out by 11 executive committees, which are responsible for different administrative districts, and the Baku City Executive Committee, which provides the overall management of the other district executive committees. The relations between the Baku City Executive Committee and the district executive committees are bottom-up and based on mutual co-operation. Although there is a local executive committee covering the entire city of Baku, there is no municipality at the city level. According to the Law on Municipal Territories and Lands, there are 52 municipalities in Baku. Since they are all part of the same tier of government, there is no relationship of subordination among them and each is only responsible for the socio-economic issues in and management of its own territory.

131. The status of the city of Baku is defined by the Law on the Territorial Structure and Administrative Territorial Divisions, section 5(9) of which states that a law on the city of Baku must be adopted.

132. The current system of local self-governance excludes the establishment of a single municipality in cities, including Baku with its many districts. A Municipality of Baku cannot be established because Azerbaijan’s Electoral Code does not provide for this. According to the Code, the number of members of municipal councils in Azerbaijan is fixed on the basis of the size of the population living in a municipality. The Code lays down a maximum population size of 299,999 for the election of municipal councillors, but Baku now has around 3 million inhabitants.

133. The maximum limits specified in the Electoral Code with regard to the number of residents required to establish a municipality within the same territorial unit should be removed and the necessary legal basis should be created to allow the creation of large city municipalities.

134. The rapporteurs, weighing up the reasons given by the Azerbaijani authorities for sustaining the current system of the capital’s administration, do not see any compelling argument for depriving the capital of local self-government (this is the only case in Europe). The role of central government authorities should be limited to the regulation and (proportionate) administrative supervision of the capital city’s municipal government instead of its direct management.

135. The principle and guarantees of local self-government should therefore be provided for all the big cities in Azerbaijan, such as Ganja, on the basis of the existing local executive authorities. The latter would be important for retaining the scope of responsibilities and full capacities of the current

executive bodies and ensuring the effective and efficient work of the new municipal governments. In the case of Baku, consideration could be given to the adoption of a separate law recognising its preeminent role as the country's capital and most important economic and cultural centre. Having regard to the size and traditions of the government of Baku, a two-tier system of municipal government with a rational division of city districts, where directly elected councils would operate at both levels, could be more effective.

136. The delegation reiterates Congress Recommendation 219 (2007) on the "Status of capital cities" and Recommendation 133 (2003) on the "Management of capital cities", establishing the conditions for setting up a democratically elected municipality in the capitals of the Council Europe member states.

137. Despite all discussions on this issue, the representatives of the President's Administration told the delegation that the *Milli Majlis* had had no discussions on setting up an elective city council and mayoral institution in Baku.

138. The representatives of the Minister of Justice informed the delegation that the State Programme on Poverty Reduction and Sustainable Development in the Republic of Azerbaijan for 2008-2015 provided for the drawing up of regulatory documents on a Large City Municipality.

12. ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY IN THE REPUBLIC OF AZERBAIJAN IN THE LIGHT OF THE PROVISIONS OF THE CHARTER

12.1. Principle and concept of local self-government (Articles 2 and 3)

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

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

Article 3 – Concept of local self-government

- 1 Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
- 2 This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

139. Article 2 of the Charter requires signatory countries to recognise the principle of local self-government in their domestic legislation. The relevant chapter of the Constitution (Chapter VIII) and the corresponding provisions of the Law on the Status of Municipalities do not fully meet the requirements of the Charter since they do not recognise local authorities as part of the state organisation system and do not acknowledge the right of local governments to regulate and manage a substantial proportion of local public affairs. Despite the repeated recommendations of the various Council of Europe bodies, Azerbaijan has failed to implement Articles 2 and 3 of the Charter since 2003.

140. The constitutional and legislative recognition of the principle of local self-government, which refers to the right of local authorities to regulate and administer local affairs in an autonomous way, is an indispensable requirement of the Charter, and Azerbaijan should therefore unambiguously recognise municipalities as state institutions exercising public power and as part of the overall public administration. To that end, the relevant provisions of the Constitution and the Law on the Status of Municipalities should be brought into line with Articles 2 and 3 of the Charter.

141. It should be noted that Recommendation 126 (2003)¹ on local and regional democracy in Azerbaijan and the Venice Commission have already proposed a more precise legal definition of municipalities and the reformulation of the relevant law to specify that, "while municipalities are undeniably independent, they are none the less public authorities belonging to the country's system of public administration, like all other authorities directly elected by the people".

142. Although the Charter recognises the freedom of all member states to establish their own system of public administration adapted to their specific national, historical and other characteristics and does not require the establishment of a regional level of self-government, the Azerbaijani authorities could

consider setting up directly elected regional governments in the light of the Regional Framework on Regional Democracy in order to mitigate the centralisation of public administration and make territorial governance more effective and democratic. This regionalisation could be built on either the existing structures of the economic regions or on the administrative districts, albeit with partly modified powers and duties.

12.2. Scope of local self-government (Article 3(1) and Article 4)

Article 3 – Concept of local self-government

- 1 Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
- 2 This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Article 4 – Scope of local self-government

- 1 The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
- 2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
- 3 Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
- 4 Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
- 5 Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
- 6 Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

143. While the basic powers and duties of municipalities are laid down by the Constitution and statutes, the range of responsibilities of local governments is extremely narrow and in no way corresponds to the requirement of Art. 3(1) of the Charter that a “substantial share of public affairs” should fall within the jurisdiction of local governments. Although the Charter does not specify the kind of local public affairs to be regulated and managed by local authorities (municipalities in this particular case), the most important local matters that greatly affect the life of the local community should, as a general principle, be decided and managed by local governments. In Azerbaijan, the vast majority of local public services are delivered by the local executive bodies of the state administration, which are directly subordinate to the central government authorities. This division of powers and duties may lead to an ineffective local administration and, in the absence of local democratic scrutiny, result in a serious democratic deficit.

144. In particular, Recommendation 126 (2003)¹ stated that “the powers and responsibilities of Azerbaijan’s municipalities are very limited, failing to account for any substantial share of public affairs as stipulated in the European Charter of Local Self-Government”, but since then no change has occurred in the legislation. Moreover, as explained in paragraph 71 a presidential decree from 6 June 2012 minimized in fact the powers of municipalities

145. In order to comply with the principles enshrined in Art. 3(1) and Art. 4, the Azerbaijani authorities should substantially review the division of tasks and powers between the parallel structures of local public administration and establish a transition period for transferring responsibility for the most important local public matters to the municipalities. The division of powers and duties between the local executive authorities and the municipalities is so disproportionate and uneven at the moment that an immediate transfer of tasks and functions can hardly be rationally accomplished. Local governments should be enabled to carry out the new functions in an effective and efficient way. A quicker and more effective transfer would be possible if the local and executive authorities were democratically elected by the citizens. However, as things stand today in Azerbaijan, local authorities,

both in their composition and in their operation, do not conform with basic democratic principles and do not benefit from the principles of autonomy laid down in the Charter, which the national authorities have ratified.

146. The functions of local governments are typically not full and exclusive since municipalities and local executive authorities carry out many parallel functions. Although the Charter gives priority to full and exclusive powers of municipalities, this is not a categorical rule. However, if both local governments and local bodies of the state administration have tasks in a specific area, it is a minimum requirement that the relevant responsibilities should be clearly separated from each other, and there should be a precise division of responsibilities. Accordingly, the Law on the Status of Municipalities and the other laws transferring mandatory tasks and functions to municipalities should ensure that the powers and duties entrusted to municipalities are full and exclusive and that the municipalities have full discretion to exercise their initiative with regard to any matter not excluded from their competence or assigned to any other authority.

147. The Charter also requires that local authorities should have discretionary power even as regards delegated powers, so as to adapt their exercise to local conditions. However, as a first step it is necessary to define clearly the administrative nature of municipalities' responsibilities, distinguishing the delegated powers from other functions, since central government should ensure the proper financial means necessary to implement the delegated tasks.

148. It would also be advisable to empower local governments explicitly to undertake voluntary tasks for the welfare of the local population that do not fall within the exclusive responsibility of another public authority.

149. Azerbaijan has declared itself not bound by Article 4(3) of the Charter (see part 12.8 below)

12.3. Protection of boundaries (Article 5)

Article 5 – Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

150. The Charter requires that local authority boundaries should not be changed without prior consultation with the local communities concerned, possibly by means of a referendum where this is permitted by statute. Although the request for the opinion of the local community in the case of any change in an administrative boundary of a municipality is defined by law, some reports claim that the practice does not comply with this requirement in every case. Therefore, more attention should be paid to the compliance with this guarantee, and it would also be advisable to specify the forms and mechanisms of consultation on these issues.

151. The transparency of local government mergers could be increased by determining the strategic objectives and goals of municipal integration (if any) and discussing them with the municipalities concerned and their associations prior to any change in local governments' administrative boundaries.

12.4. Administrative structures and the conditions of the free exercise of functions (Articles 6 and 7)

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

- 1 Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
- 2 The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

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

- 1 The conditions of office of local elected representatives shall provide for free exercise of their functions.
- 2 They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.

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| 3 | Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles. |
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152. The local authorities have the right to determine their internal administrative structures and they should be able to adapt them to local needs and ensure effective management. Apparently, this organisational autonomy can be restricted only by law, in order to ensure the democratic operation of all local governments. The Charter requires that the right conditions must be provided for the office of local elected representatives in order to ensure free exercise of their functions.

153. It is important that these provisions not only require the state to respect the local governments' freedom to organise their internal structures but also enable them to enjoy this right in practice. The process of transferring property to municipalities, as determined by law, should be completed as soon as possible. Moreover, the municipalities should be provided with administrative buildings and other physical assets and instruments necessary for them to implement their tasks and functions. The central government should take also effective measures to launch capacity-building and proper training programmes for the members of municipal staff in order to increase the quality of their daily administrative work.

154. Azerbaijan has declared itself not bound by Article 7(2) of the Charter (see 12.8 below).

12.5. Administrative supervision (Article 8)

Article 8 – Administrative supervision of local authorities' activities

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| 1 | Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute. |
| 2 | Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities. |
| 3 | Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect. |

155. Any administrative supervision of the activities of the local authorities can only aim 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.

156. Article 52 of the law on the status of municipalities should precisely determine which administrative authorities are empowered to exercise legal supervision over municipalities, thus eliminating the uncertainty of the current legislation, which refers only to the “relevant executive body”.

157. The local governments' obligation to report to the parliament (Article 146- IV of the Constitution)²² about their operation should be abolished as a pointless and unnecessary duty. In this respect see para 110 – the Venice Commission pointed out also this matter of concern in light of the European Charter of local self-government. Instead, the central government's supervisory authority should be confined to checking the lawfulness of municipal acts. The Azerbaijani authorities should make efforts to abolish any additional and informal supervision carried out by local executive authorities, and the latter should refrain from asking municipalities to report to them about their activities, with the exception of supplying statistical data where justified.

12.6. Financial resources (Article 9)

Article 9 – Financial resources of local authorities

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| 1 | Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers. |
| 2 | Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law. |

²² “Municipalities submit reports to the *Milli Majlis* of the Republic of Azerbaijan in cases and in the manner prescribed by law”

3	Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4	The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5	The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6	Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7	As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8	For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

158. Art. 9(1) of the Charter provides that local authorities must have adequate financial resources of their own, of which they may dispose freely within the framework of their powers. Financial autonomy is an essential component of the principle of local self-government and for the exercise of a wide range of responsibilities in the field of local public affairs. These elements are cumulative and not alternative, which means that all conditions laid down in this provision of the Charter are mandatory.

159. Another basic principle requires that local authorities must have sufficient financial resources in proportion to the responsibilities assigned to them by law. However, this requirement seems to be more or less met in Azerbaijan, but only because municipalities have only extremely limited functions.

160. As all evidence shows, municipalities have only minimal financial resources, which is the main obstacle to their becoming properly involved in local administration in Azerbaijan. In the absence of sufficient revenues, they are not able to play a more significant role in local democracy. It is inconsistent to say, as the delegation was told during the visit that, on the one hand, municipalities are unable to perform more tasks and functions than those that they carry out today and to claim, on the other hand, that they do not need more revenues because they perform only a few tasks.

161. Parallel to the proposed decentralisation of tasks and functions, the state budget should contribute to their costs to a much greater extent than is currently the case. As large a proportion of these transfers as possible should be allocated as block grants, thus providing freedom for municipalities to spend them as they wish. It is also an explicit preference of the Charter that the provision of grants should not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction. This does not mean that special subsidies allocated for specific purposes cannot have any place in local government finance. Special grants should be earmarked for projects, concrete tasks or public services that the central government wants to support in this targeted way.

162. Both block and special grants should be distributed in a transparent and predictable way on the basis of clear and unambiguous criteria. The mechanisms for the allocation of state grants and subsidies should be established in co-operation with the national municipal associations in order to take the interests and opinions of local governments into consideration.

163. The Charter also requires that a proportion of local revenues should come from local taxes, and local governments must be able to determine the rate applicable. Although the latter condition is met in Azerbaijan to the extent that local governments may decide what municipal taxes they impose and what tax rates to apply, the local tax revenues provide such a low income that this right is only formal and insignificant in practice. That said, the fact that local governments can determine the rate of some taxes is not consistent with the Charter if they are not able simultaneously to collect taxes in an appropriate manner (as pointed out in paragraph 93).

164. As mentioned above, tax-collection mechanisms should be improved at municipal level. This requires not only better and more precise legislation but also makes it necessary to provide municipalities with qualified staff and facilities (buildings, information technology, etc.) in order to ensure an efficient tax collection procedure.

165. As the Charter states, “the protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support.” As there is no standardised financial equalisation mechanism for local governments in Azerbaijan, the poorest municipalities are in a detrimental financial situation without any predictable central government budget support. Under these circumstances, they might be in an extremely vulnerable economic position and this could undermine any plausible system of local self-government. Moreover, in the absence of an effective financial equalisation system regional discrepancies cannot be reduced or mitigated in a transparent way.

166. Accordingly, in order to comply with this provision of the Charter, the Azerbaijani authorities should immediately begin to establish an effective and well-designed financial equalisation system. This should be based on the principle of solidarity and apply objective criteria for assigning central budget subsidies to the municipalities in need. It is also important that the procedures and measures applied to financial equalisation must not diminish the discretion that municipalities may exercise with regard to their own powers. Even if the revenues from the equalisation fund can be regarded as extraordinary or special subsidies, this characteristic of the local resources must not justify any central government interference with the freedom of municipalities to deal with local public matters, unless a municipality is in financial difficulties of its own making.

167. As far as additional revenues are concerned, local governments should be given assistance to raise loans as their weak financial potential means they can hardly borrow money on the financial markets. Nonetheless, there are in Council of Europe member states many good practices with regard to the provision of central government support for the financial position of local governments in such a situation, for instance encouraging or setting up municipal development funds or savings banks to provide loans for municipalities.

168. According to the Charter, local governments must be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them. The Congress delegation concluded that the national associations of municipalities are not involved in the decision-making process relating to local government finance in Azerbaijan, and the Azerbaijani authorities should therefore establish an appropriate procedure for consultation on financial matters as soon as possible (see also the proposals in 12.7. below).

169. Azerbaijan has declared itself not bound by Article 9(5) and (6) of the Charter (see 12.8 below)

12.7. Right to associate and legal protection of local governments (Articles 10 and 11)

Article 10 – Local authorities’ right to associate

- 1 Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
- 2 The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
- 3 Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

Article 11 – Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

170. The Charter requires the signatory countries to provide for the right for local governments 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. According to this requirement, each member state has to recognise the entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities. Furthermore, local governments must be consulted, insofar as possible, in due time and in an appropriate way, in the planning and decision-making processes for all matters that concern them directly.

171. Self-evidently, the existence of a strong local government system is an indispensable prerequisite for an effective consultation mechanism. Where local autonomy is weak and the local and regional communities are in a vulnerable position vis-à-vis the central government, their ability to represent their own interests is also weak, and in these cases the central government should take initiatives to strengthen the consultation mechanisms.

172. The national associations of municipalities do not play an important role in central policy-making or in representing local interests in Azerbaijan. Many stakeholders claim that they operate only formally without any real effects on development. This was confirmed by NGO's reports, notably one dedicated to "Enhancing efficiency of services provided by Municipal Associations for the local self-government bodies" but also in the report on "Assessments of conformity of organizational and operational aspects of municipalities in Azerbaijan with principles and requirements of European Charter on local self-government" which states clearly that "Since the establishment of municipal associations in 2006, no initiatives have been taken to further develop municipalities and thus decentralize the administration system. Associations have not demonstrated any considerable initiative in the field of local self-governance development. Associations have not built their work efficiently yet, their activities include collection of membership fees and organization of a few gathering only".²³

173. The national associations of municipalities must be able to build competence and the ability to represent their members. Azerbaijan's central government authorities should strive to enable municipal associations to fulfil their functions, which are to collect, express and represent municipal interests, and national associations should be given sufficient human, technical and financial resources for this purpose. In addition, the consultation mechanisms should be specified in much greater detail in legislation. The central government authorities have broad discretion as to what forms and mechanisms are applied to achieve this goal, but they are strongly advised to place them on a permanent and regular basis, involving all types of municipalities (and their associations).

174. However, since the visit national authorities objected that this information is not correct and stressed on the contrary the important role of national associations in the central policy-making process. National authorities underline, notably that "Representatives of national associations participate in the improvement of legislation related to local self-government issues, submit opinions and proposals, raise issues before state bodies". Nevertheless, the rapporteurs did not receive any tangible replies from these associations about their concrete participatory rights, their role and their effectiveness in the national policy-making process.

175. Moreover, the central government authorities should provide proper information for local governments and their associations before consultations take place in order to ensure that they are well-informed about the motives, aims and arguments concerning the planned decision or policy. Strategically important decisions must be based on careful analyses of the economic consequences for the local and regional level as well as the implications for self-governance. In the consultation process, municipalities and their associations should be entitled to comment and make suggestions on all legislation and policies affecting the local level.

176. Azerbaijan has declared itself not bound by Article 10(3) of the Charter (see 12.8 below).

12.8. Undertakings – reservations made by States (Article 12)

Article 12 – Undertakings

- 1 Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:
- Article 2,
 - Article 3, paragraphs 1 and 2,
 - Article 4, paragraphs 1, 2 and 4,
 - Article 5,
 - Article 7, paragraph 1,
 - Article 8, paragraph 2,
 - Article 9, paragraphs 1, 2 and 3,
 - Article 10, paragraph 1,
 - Article 11.

²³ See the above mentioned report by BINA-NGO Alliance for Municipal development.

- 2 Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.
- 3 Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

177. As discussed earlier, Azerbaijan has made some reservations concerning the scope of the European Charter of Local Self-Government and stated that it is not bound by Article 4(3), Article 7(2), Article 9(5) and (6) and Article 10(3) of the Charter. The Congress delegation is convinced that Azerbaijan is currently failing to comply fully with these provisions of the Charter (as in the case of some other provisions) and consequently believes that the maintenance of these reservations could be justified. Nevertheless, as the proposals in this report show, the Azerbaijani authorities are strongly advised and encouraged to draw up and implement comprehensive decentralisation reforms that may lead to the withdrawal of all these reservations.

178. The representatives of the Minister of Justice informed the delegation that several state bodies had been instructed to submit proposals on the possibility of Azerbaijan's accession of to the relevant articles of the Charter and that the matter would be considered in the near future. The rapporteurs welcome this positive information brought to their attention during the visit and will closely follow further developments in this respect.

179. At the same time, the representatives of the Minister of Justice added that it should be noted that, despite the fact that the Republic of Azerbaijan had not yet acceded to paragraph 3 of Article 10 of the Charter, certain measures had been taken towards its implementation. For example, the Law of 25 October 2011 had inserted a new paragraph into the Law on the Status of Municipalities providing for the right of municipalities and their associations, as agreed with the Ministry of Foreign Affairs, to conclude co-operation agreements with foreign local government bodies and to become members of specialised organisations of local government bodies.

13. CONCLUSIONS – ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY AND RECOMMENDATIONS ON AN ARTICLE-BY-ARTICLE BASIS

180. When assessing the situation of local and regional democracy in Azerbaijan in general, and in the light of the implementation of the European Charter of Local Self-Government in particular, we cannot disregard the fact that municipalities, through which local self-government is carried out, were only established in 1999. Since then, it has frequently been said that full compliance with the requirements of the Charter and the strengthening of the system of local government need some time. Undoubtedly, the introduction and development of the principle and practice of local self-government is a time-consuming process in a country where no old traditions can be revived but the adoption and application of foreign practices have considerable significance. Nevertheless, since Resolution 1305 (2002) of the Council of Europe Parliamentary Assembly on the honouring of obligations and commitments by Azerbaijan,²⁴ the first monitoring report and the recommendations made by the Congress in 2003 it seemed clear to the rapporteurs that no real changes had occurred in the country on these particular issues. Azerbaijan's system of local government more or less has to face the same problems as before and almost the same proposals can be made today as in 2003. The slowness of positive changes and the failure to implement some principles of the Charter are justified concerns.

181. The rapporteurs have concluded from the analysis of the information, data and personal views provided during the monitoring visit to Azerbaijan and from the article-by-article analysis of the implementation of the Charter, as set out below that Azerbaijan is failing to comply with some major principles and requirements of the Charter. The delegation found that the country had not made much progress in accepting and complying with the Congress's recommendations following the first monitoring of local government in 2003.

²⁴ In that Resolution, the Parliamentary Assembly called upon the Azerbaijani authorities to proceed with adapting their legislation to the principles of the European Charter of Local Self-Government as well as to define and implement a genuine decentralisation strategy.

182. The rapporteurs consider that it is necessary to carry out complex reforms in the direction of administrative and financial decentralisation in order to solve existing problems and develop local self-governance. The main problems are as follows.

183. The ambiguous and insufficient definition of local-self-government.²⁵ Azerbaijan should recognise municipalities as state institutions that exercise public power as part of the overall public administration in line with the European Charter of Local Self-Government.

184. The parallel structures in the system of local self-governance, which causes a clash of authority and groundless interference in the activities of municipalities, and the imprecise division of responsibilities between municipalities and local state bodies. In order to comply with the principles enshrined in Art. 3(1) and Art. 4, the Azerbaijani authorities should conduct a substantial review of and reconsider the division of tasks and powers between the parallel structures of local-level public administration and establish a transition period for transferring responsibility for the most important local public matters to the municipalities.

185. The centralised system of the state administration under the President of the Republic. In Azerbaijan, the vast majority of local public services are delivered by the local executive bodies of the state administration, which are directly subordinate to the central government authorities. This division of powers and duties may lead to ineffective local administration, and, in the absence of local democratic control, result in a serious democratic deficit. The existing/*de facto* hierarchical relationship between the local executive bodies and the municipalities does not comply with European democratic standards and the Charter.

186. The transparency of further local government mergers could be increased by determining the strategic objectives and goals of any further municipal integration and discussing them with the municipalities concerned and their associations prior to any change in local governments' administrative boundaries. All reforms in this direction should be based on the low number of people required to establish local government entities. The representation quota for citizens in communities of merged municipalities should be assured. More attention should be paid to compliance with this guarantee, which is laid down by the Article 5 of the Charter, and it would also be advisable to specify the forms and mechanisms of consultation on these matters.

187. Despite some state measures to train, retrain and improve the qualifications of municipal employees, the staff capacity of municipalities remains weak. Central government should develop effective measures to launch capacity-building and proper training programmes for members of municipal staff in order to increase the quality of their daily administrative work.

188. The state has not fully carried out its duty to give property to municipalities. The slowness of the transfer has caused difficulties, as has the lack of any precise identification and delimitation of municipal property, in particular municipal land. Many problems also arise from the insufficient resources made available to municipalities. On 10 February 2010, the President signed a decree authorising the application of the law of the Republic of Azerbaijan on "the State registry and provision of municipalities with proper certification". The decree provides that the State Land and Mapping Committee must draw up and submit maps of the municipal lands to the body in charge of the State Registry of Municipalities by 1 January 2013. The process of transferring properties to municipalities, as determined by law, should be completed as soon as possible. Moreover, the municipalities should be provided with administrative buildings and other physical assets and instruments necessary for them to implement their tasks and functions.

189. The unclear provisions concerning the procedure for supervising the municipalities. The law should clarify and determine precisely which administrative authorities are empowered to exercise legal supervision over municipalities, thus eliminating the uncertainty of the current legislation, which refers only to the "relevant executive body" and the practice of this supervisory procedure.

²⁵ Section 1 of the Law on the Status of Municipalities in Azerbaijan, which states that "local self-government in the Republic of Azerbaijan is a system of managing the citizens' lives ...", and section 2(2) of this law, which defines municipal bodies as "bodies created by the municipality and not included in the system of state bodies for the purpose of organising municipal services and resolving issues of local importance".

190. The local governments' obligation to report to the parliament on their own operation should be abolished as a pointless and unnecessary duty of municipalities. Instead, the central government's supervisory authority should be confined to checking the lawfulness of municipal acts. The Azerbaijani authorities should make efforts to abolish any additional and informal supervision carried out by local executive authorities, and the latter should also refrain from asking municipalities to report to them on their activities, with the exception of supplying statistical data where this is justified.

191. The weak financial potential of municipalities. The municipalities do not have stable sources of finance. They have only minimal financial resources, which is the main obstacle to their becoming properly involved in local administration in Azerbaijan. They do not make full use of income sources theoretically available to them because the majority of them do not possess most of those sources and tax collection mechanisms are underdeveloped.

192. In spite of the legal entitlement, municipal taxes are not imposed or collected in an efficient way because of the weak capacity of local governments. Their shortage of staff and equipment and their lack of expertise make it impossible to exercise their right to levy taxes. The administrative shortcomings, such as the absence of a reliable registry of private homes for the imposition of property taxes, may also make it difficult to obtain sufficient resources. The rapporteurs consider that this situation, which could be described as a "sleeping potential", obviously deprives the local authorities of a substantial proportion of their potential revenues and that remedies to remedy the tax collection procedure should be implemented as quickly as possible.

193. The state transfers to municipalities are insignificant. These transfers and special grants should be distributed in a transparent and predictable way on the basis of clear and unambiguous criteria. The mechanisms for the allocation of state grants and subsidies should be established in co-operation with the national municipal associations in order to take the interests and opinions of local governments into consideration.

194. As there is no standardised financial equalisation mechanism for local governments in Azerbaijan, the poorest municipalities are in a detrimental financial situation, without any predictable central government budget support. The Azerbaijani authorities are encouraged to establish an effective and well-designed financial equalisation system. This should be based on the principle of solidarity and apply objective criteria for allocating central government budget subsidies to municipalities in need.

195. The Congress delegation concluded that municipalities and the national associations of municipalities are not involved in the decision-making process relating to local government finance in Azerbaijan, and the Azerbaijani authorities should therefore establish an appropriate procedure for consultation on financial matters as soon as possible. According to the Charter, local governments must be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

196. Local governments should be given assistance to raise loans as their weak financial potential means they can hardly borrow money on the financial markets. Nonetheless, there are in Council of Europe member states many good practices with regard to the provision of central government support for the financial position of local governments in such a situation, for instance encouraging or setting up municipal development funds or savings banks to provide loans for municipalities.

197. Municipal associations are weak and do not play an important role in central government policy-making or in representing local interests in Azerbaijan. Many stakeholders claim that they operate only formally without any real effects on development. Although three national associations of municipalities (towns, villages and settlements) have been established, they rather passively support the interests of municipalities and suggest improved ideas and strategies for self-governance. As far as the Congress delegation was able to review the relevant legislation, no legal rules contain the right of municipalities or municipal associations to be consulted on matters or decisions of central government authorities affecting local government interests. Neither the Law on the Budget System nor the Law on the Status of Municipalities contains any requirements for state authorities to consult with them in due time on all relevant issues. In fact, it seems as if municipal associations were only established in order to comply formally with the requirements of the Charter and that they do not engage in any real activities.

198. Azerbaijan ratified the Charter and declared itself not bound by Article 4(3), Article 7(2), Article 9(5), Article 9(6) and Article 10(3). The Congress delegation is convinced that Azerbaijan is failing at the moment to comply fully with these provisions and consequently believes that the maintenance of these reservations could be justified. Nevertheless, as the proposals in this report show, the Azerbaijani authorities are encouraged to draw up and implement comprehensive decentralisation reforms that may lead to the lifting of all these reservations.

199. The representatives of the Minister of Justice added that it should be noted that, despite the fact that the Republic of Azerbaijan has not yet acceded to paragraph 3 of Article 10 of the Charter, certain measures had been taken towards its implementation. For example, the Law of 25 October 2011 had inserted a new paragraph into the Law on the Status of Municipalities providing for the right of municipalities and their associations, as agreed with the Ministry of Foreign Affairs), to conclude co-operation agreements with foreign local government bodies and to become members of specialised organizations of local government bodies.

200. The status of the city of Baku is laid down in the law of the Azerbaijan Republic on “territorial structure and administrative territorial division”, section 5(9) of which states that a law on the city of Baku must be adopted. The rapporteurs, weighing up the reasons given by the Azerbaijani authorities for sustaining the current system of the capital’s administration, do not see any compelling argument for depriving the capital of local self-government (this is the only case in Europe). The role of central government authorities should be limited to the regulation and (proportionate) administrative supervision of the capital city’s municipal government instead of its direct management. The delegation recalls Congress Recommendation 219(2007) on the “Status of capital cities” and Recommendation 133(2003) on the “Management of capital cities”, establishing the conditions for setting up a democratically elected municipality in the capitals of the Council Europe member states.

201. With regard to human rights at local level, the Congress delegation has considered many complaints about of the evictions, expropriations and demolitions of private homes in central Baku by the Baku executive authority as part of the capital city’s so-called “beautification” programme. According to an estimate by civil organisations, about 10,000 residents have lost their homes there in the past few years. It should be noted that many people have lost their property in a suburb of Baku but most are immigrants without a legal title to their homes and in practice municipalities have no real means to protect citizens against such actions of the Baku executive authorities. The Congress delegation will convey this information to the relevant Council of Europe bodies that deal with human rights.

202. It is clear that Azerbaijan should make great efforts to bring about genuine decentralisation. In this connection, the central government authorities, including the President and his office, the Parliament and the Cabinet of Ministers, should develop a comprehensive strategy for improving the local government system and local democracy and draw up a precise and complete roadmap for its implementation.

203. It is not only important that the proposed changes in the systems of local and regional democracy in Azerbaijan should comply with the European Charter of Local Self-Government but also crucial for them to gain the trust of the population. If local bodies are politically weak, public trust is undermined, so it is fundamentally important to reform the entire local and regional system.

204. Finally, the rapporteurs urge the Azerbaijani authorities to sign the Additional Protocol to the Charter on the Right to Participate in the Affairs of a Local Authority (ETS No. 207) in the near future.

205. The Council of Europe Congress of stands ready to assist the Azerbaijani authorities in their efforts towards a major reform of local and regional democracy in Azerbaijan in the light of the Charter of Local-self Government

APPENDICES

Appendix 1 – Information on human rights and local authorities

Appendix 2 – Programme of the Congress Monitoring visit to Azerbaijan (2-5 April 2012)

Appendix 3 – Sources (legal texts and documents used as sources)

Appendix 4 – Comments received from the Azerbaijani government

APPENDIX 1 – INFORMATION ON HUMAN RIGHTS AND LOCAL AUTHORITIES

206. Local communities are the natural environment for grassroots democracy. The quality of local democracy can be characterised not only by direct citizen participation (as discussed above), but also by the human rights situation. It is a fact that municipalities, as institutionalised frameworks for local public life, have a preeminent role in shaping local democracy and safeguarding the citizens' fundamental rights.

207. The state of human rights in Azerbaijan has been frequently criticised by the international community in the past year. Although most of the criticisms did not relate to the activities of local governments, some problems (or, to be more precise, suspected human rights violations) have been linked to the actions of local authorities or municipalities. The Congress delegation was limited in its ability to assess the situation in Azerbaijan from this point of view and had little opportunity to do so as its mandate did not extend to the investigation of any alleged abuse. Nevertheless, it did have some meetings with human rights activists, journalists and representatives of some institutions involved in the promotion of human rights in that country. Following these consultations, the Congress delegation is only able to make general remarks and voice some concerns.

208. One of the major problems that the Congress delegation encountered is the process of carrying out evictions, expropriations and demolitions of private homes in central Baku as part of the capital city's so-called "beautification" programme. According to an estimate by civil organisations, about 10,000 residents have lost their homes there in the past few years. It should be noted that many people have lost their property in a suburb of Baku but most are immigrants without a legal title to their homes, so their cases differ from those of the residents of central Baku, whose flats and houses, estimated at a few hundred in number, have been expropriated for the reconstruction of the city centre.

209. Many complaints about the expropriation processes have been made by the stakeholders. For example, the legal basis of these measures is unclear. It is alleged that there is a general development plan dating from 1978 that is still in effect, but even if that is the case it seems obvious that no careful and well-established planning preceded the administrative decisions to carry out individual expropriations, so residents were not given appropriate information in advance.

210. In addition, the relevant legislation seems unjust since it prescribes the same, undifferentiated amount of compensation for all expropriated property (1,500 manats per square meter) regardless of the location or the state of the property. According to some civil organisations, in many places in Baku city centre, the real value of the expropriated properties was much higher than the compensation offered by the Baku executive authorities. The expropriation of private property is admittedly always a sensitive and difficult issue that often leads to disagreements between the public authorities and the citizens concerned, which is the main reason why modern legal systems provide judicial guarantees for owners to check the conditions and procedure of an expropriation and ensure fair and complete compensation for expropriated properties. The path to seek legal redress is also safeguarded by the Azerbaijan Constitution, which states that that everyone has the right to own property and that the "rights of private owners are protected by law". It also stipulates that "[n]o one can be deprived of his or her property without a decision of a court [...] The confiscation of a property for state needs is allowed only after its cost is fairly reimbursed" (Art. 29,(I)(II) and (IV)). However, in many cases the judicial protection was not available to the local residents concerned because the public authorities responsible ordered the immediate execution of evictions and the demolition of the expropriated homes even if the owners had not accepted the offer made by the Baku executive authority to compensate them for the loss of their property (the Congress delegation was informed about at least one case in which the executive authorities carried out the eviction and demolition despite a judicial injunction suspending the measures). There is anecdotal evidence in support of the claim that the evictions and demolitions were sometimes carried out in the absence of the owner or residents concerned.

211. In other cases, the courts are reluctant to deal with such disputes because the object of the legal procedure no longer exists. The lack of formal and final judicial decisions also prevents the citizens concerned from submitting a constitutional complaint to the Constitutional Court. This procedure could, in theory, be appropriate means of seeking redress for those who have suffered damage due to an act of a public authority but it is in practice devoid of any relevance because the formal conditions of its use (e.g. a final judicial decision), through no fault of the victims, are lacking in such cases.

212. Another “hot” human rights topic at local level is freedom of the press. While local newspapers often report about local grievances and abuses by local authorities, there are some “no-go areas” for journalists. For example, according to some sources it is risky for journalists to write on the private life and economic interests of the president’s family and on other sensitive issues, such as forced evictions and demolitions. The arrests and abuse of some investigative journalists in recent times may understandably discourage others from reporting on similar topics even if they affect the local (or wider) community. On the other hand, the relative freedom of the written press is counterbalanced by the strong control of the electronic media, which are nowadays by far the most influential mass media instrument.

213. The right to freedom of assembly is also closely connected to freedom of expression. Some independent sources claim that, in practice, organisers of demonstrations protesting against government policies are frequently denied permission and may only hold demonstrations on the outskirts of Baku. The administrative obstacles to freedom of assembly make the establishment of a democratic local public life more difficult, especially when they are applied to campaign events at election times, as shown by the allegations relating to the concerns about local elections mentioned in the report.

214. The administrative burdens imposed on the free and unrestrained operation of civil organisations bring about similar negative effects because civil society can provide the ferment of local public life. The requirement for domestic and international NGOs to register with the authorities may result in such a situation, as may the obligation for international NGOs to conclude a formal agreement with the Ministry of Justice.

215. Religious organisations have a similar obligation, since new legislation in 2009 introduced requirement for them to re-register. In practice, this causes problems for several religious groups and churches which were refused permission to re-register or were not given clear reasons for the refusal.

216. Since all unnecessary administrative burdens and costs hamper the strengthening of local democracy and discourage local citizens from participating directly in public local affairs, these obstacles should be reconsidered, and, if possible, lifted or made less onerous.

APPENDIX 2

**CONGRESS MONITORING VISIT TO AZERBAIJAN
Baku City and Mardakan Municipality (2-5 April 2012)**

PROGRAMME

Congress delegation:

Mr Jos WIENEN	Rapporteur on local democracy Member of the Monitoring Committee of the Congress Chamber of Local Authorities, EPP/CD ²⁶ Mayor of Katwijk (The Netherlands)
Mrs Gudrun MOSLER-TÖRNSTRÖM	Rapporteur on regional democracy Member of the Monitoring Committee of the Congress Chamber of Regions, SOC ²⁷ Vice-President of the State Parliament of Salzburg (Austria)

Expert:

Mr Zoltan SZENTE	Consultant (Hungary) Member of the Group of Independent Experts on the European Charter of Local Self-Government of the Congress
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Congress Secretariat:

Mrs Stéphanie POIREL	Secretary of the Monitoring Committee of the Congress
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Monday, 2 April 2012

Meeting with NGOs and the School of Political Studies

Meeting with:

Mr Koray TARGAY, Ambassador, Head of the OSCE Office in Baku

Joint meeting with the Azerbaijan Delegation to the Congress and the representatives of
Municipal Associations:

Mr Anar IBRAHIMOV, (Rep, EPP/CD), Deputy of the Supreme Assembly of the Nakhchivan
Autonomous Republic (YAP)

Ms Samira ALIYEVA, (Rep, SOC), Member of the Municipality of Narimanov

Mr Abulfaz BABAYEV, (Rep, EPP/CD), Chair of Sumgait Municipality, Chair of the Association of City-
municipalities of Azerbaijan

Mr Ilham KHALILOV, (Rep, EPP/CD), Chair of Biladjari Municipality (Binaqadi district), Chair of the
Association of Settlement-municipalities of Azerbaijan

Mrs Sevil MANSUROVA, (Sub, SOC), Member of Merdekan Municipality

Mr Ali MEHDIYEV, (Sub, EPP/CD), Vice-Chair of the Municipality of Novkhani, Chair of the Association
of Village-municipalities of Azerbaijan

Mrs Gulnaz SALAMOVA, (Sub, EPP/CD), Chair, Sheki city municipality

²⁶ EPP/CD : European People's Party – Christian Democrats of the Congress

²⁷ SOC : Socialist Group

Mr Rauf ALIYEV* R., (Rep, EPP/CD), Chair of Qivraq municipality (Kangarli District), Chairman of the National Association of Settlement- municipalities of the Nakhchivan Autonomous Republic
Mr Anar IBRAHIMOV, (Rep, EPP/CD), Deputy of the Supreme Assembly of the Nakhchivan Autonomous Republic
Mrs Yazgul RZAYEVA, (Rep, EPP/CD), Deputy of the Parliament of the Nakhchivan Autonomous Republic
Mrs Ilahe ALIYEVA*, (Sub, EPP/CD), Deputy Chair of the Nakhchivan municipality
Mr Nazim BABABEYLI, (Sub, ILDG), Deputy of the Parliament of the Nakhchivan Autonomous Republic
Mr Huseyn HASHIMLI, (Sub, EPP/CD) Deputy of the Supreme Assembly of the Nakhchivan Autonomous Republic

Meeting with NGOs Human rights:

Ms Lyudmila KHALILOVA, President of Women for Civil Society Development municipalities
Mr Eldar ZEYNALOV, Human Rights activist, Azerbaijan Human Rights Centre (AHRG)

Tuesday, 3 April 2012

Meeting with:

Mr Ramiz MEHDIYEV, the Head of Administration, Service of the Head of Administration of the President of the Republic of Azerbaijan,
Mr Zeynal NAGDALIYEV, Department on work with regional management bodies and local self-management bodies of Administration of the President of the Republic of Azerbaijan

Meeting in the Ministry of Justice:

Mr Fikrat MAMMADOV, Minister,
Mr Mehdi SALIMZADE, Chief of the Center of Work to Municipalities, Ministry of Justice of the Republic of Azerbaijan
Dr Gadir KHALILOV, Senior adviser, Centre of work with municipalities, Ministry of Justice

Meeting in the Ministry of Taxes:

Mr Fazil Asad oglu MAMMADOV, Minister of Taxes Second-Rank State Tax Councillor

Wednesday, 4 April 2011

Meeting in the Executive Power of Baku City:

Mr Hajibala Ibrahim OGLU ABUTALIBOV, Head of the Executive Power of Baku City

Meeting in the Ministry of Finance:

Mr Samir Rauf oglu SHARIFOV, Finance Minister

Meeting in the Constitutional Court of Azerbaijan Republic:

Mr Farhad ABDULLAYEV, Chairman of the Constitutional Court

Meeting in the Chamber of Accounts of the Republic of Azerbaijan:

Mr Heydar Khanish oglu ASADOV, Chairman of Chamber of Accounts

Meeting in the Chamber of Auditors of the Republic of Azerbaijan:

Mr Vahid NOVRUZOV, Chairman

Mr Najaf TALIBOV, Scientific Adviser to the Chairman:

Mr Sabuhi GULMAMMADOV, Chair of Personnel training Office, Foreign Relations and Publications

Thursday, 5 April 2012

Meeting in the Ministry of Economy:

Mr Shahin Abdulla MUSTAFAYEV, Minister

Meeting in the National Assembly of the Republic of Azerbaijan (*Milli Majlis*):

Mr Oktay Sabir ASADOV, Chairman of the National Assembly of the Republic of Azerbaijan

Mr Samad Ismayil SEYIDOV, Committee on International and Interparliamentary Relations, Head of the delegation of the Republic of Azerbaijan to the Parliamentary Assembly of the Council of Europe

Mr Ali Mahammad HUSEYNOV, Committee on Legal Policy and State Building

Mr Samadzade Ziyad ALIABBAS, Committee on Economic Policy

Mr Ali MASIMLI and **Mr Vahid AHMEDOV**, Members of Parliament

Ms Elmira Hussein AKHUNDOVA, Committee on Social Policy

Mr Rahimzade Arif GAFAR, Committee on Regional Affairs

Ms Rabiyyat Nurullah ASLANOVA, Committee on Human Rights

Mr Fazil Mustafa, Member of Parliament

Meeting in Mardakan municipality:

Mr Mirbaba HUSEYNOV, Chairman of Mardakan municipality

Mrs Sevil MANSUROVA, Member of Mardakan municipality

APPENDIX 3 – SOURCES (LEGAL TEXTS AND DOCUMENTS USED AS SOURCES)

1. Constitution of the Republic of Azerbaijan
2. Constitution of the Autonomous republic of Nakhchivan
4. Law on the Status of Municipalities
5. Law on the “Financial sources of municipalities”
6. Law on “Local (municipal) taxes and fees”
7. Law on the “Management of municipal lands”
8. Law on the approval of the Regulations for “Local Self-Government Co-ordination Councils”
9. Law on the “Status of Municipal Council Members”
10. Law on the “Approval of the standing and temporary municipal committees”
11. Law on “Merger, separation and abolition of municipalities”
12. Law on the approval of “Sample Regulations for Regional Associations of Municipalities”
13. Law on “Granting properties to municipalities”
14. Law on “Municipal Services”
15. Law on the “Approval of model statutes for municipalities”
16. Law on “Municipal territories and lands”
17. Law on the “Administrative supervision of municipalities”
18. Law on “Access to information”
19. Law on “Production and household waste”
20. Law on the “Budget system”
21. Law on “Territorial structure and administrative territorial divisions”
22. Land Code of the Republic of Azerbaijan
23. Tax Code of the Republic of Azerbaijan
24. Electoral Code of the Republic of Azerbaijan
25. Regulations on “Executive Committees”
26. Regulations on “Sanitary, hygienic and environmental standards of settlements and on the temporary storage, transportation and rendering harmless of household waste” (Cabinet of Ministers, decree 74)
27. Presidential Decree of 15 September 2008 on the State Programme on “Poverty Reduction and Sustainable Development in the Republic of Azerbaijan 2008-2015”
28. Regulations on the rules and time-limits for granting state properties to municipalities. Presidential Decree 498 of 11 June 2001
29. List of properties granted to municipalities. Cabinet of Ministers Decree 106 of 8 July 2002
30. Law on “Land reforms”
31. Presidential decree on the execution of the law on "Changes and amendments to some legislation relating to municipal land auctions or competitions"
32. Law on the “Creation of new municipalities through the merger of municipalities”
33. Law on the “Creation of new municipalities through the merger of municipalities in the Nakhchivan Autonomous Republic”

**APPENDIX 4 – COMMENTS ADDRESSED BY THE AZERBAIJANI GOVERNMENT TO THE
RAPORTEURS IN ACCORDANCE WITH ARTICLE 21 OF CONGRESS RESOLUTION
307 (2010) REV – (ENGLISH ONLY)**

The Azerbaijani side thanks the members of the Delegation of the Congress of Local and Regional Authorities for their visit to Azerbaijan that took place on 2-5 April 2012 and for their work on the preparation of the Draft Explanatory Memorandum (further referred to also as “draft report”) on “Local and regional democracy in Azerbaijan”.

It notes that the presented comments and amendment proposals are of substantive character and believes that their incorporation into the text of the Memorandum should be of benefit to the credibility, objectivity and comprehensiveness of the document.

The Azerbaijani side hopes that they will be duly taken into consideration by the Rapporteurs and members of the Monitoring Committee of the Congress in the preparation of the final version of the Memorandum.

Paragraph 9

9. a) Azerbaijan is also bordering Turkey to the west (through the Nakhchivan Autonomous Republic).
b) Instead of “Dagestanis”, which refers to the inhabitants of the Republic of Dagestan of Russia, the reference should rather be made to the “Lezghins” living in Azerbaijan (and in Dagestan).

In addition, footnote No. 9 is absent.

Thus, it is proposed to make relevant corrections in this part of the text.

Paragraph 12

This paragraph is about the Armenia-Azerbaijan Nagorno-Karabakh conflict.

We propose that the phrase “the issue of the Nagorno-Karabakh region” be replaced by “the conflict over the Nagorno-Karabakh region” in the first sentence using the CoE terminology (see PACE Resolution 1416(2005)).

Please also note that the OSCE’s Minsk Group has been in charge of negotiations since 1992, not 1994 and that unfortunately negotiations have not yielded any results.

We further propose to add in the end of this paragraph the following sentences: “At the present, a considerable part of the territory of the Republic of Azerbaijan, including seven administrative regions adjacent to the Nagorno-Karabakh region is occupied by the Armed Forces of the Republic of Armenia. As a result of the military aggression and the policy of ethnic cleansing carried out by the neighbouring Armenia, around one million Azerbaijanis, including 65,000 members of the Azerbaijani community of the Nagorno-Karabakh region of the Republic of Azerbaijan have been expelled from their places of permanent residence and still are not able to return and enjoy their rights to property and home, as well as their right to form local self-governance”.

Paragraph 13

This paragraph analyses the political system of the country and assesses the presidential elections.

The allegation in the report that “none of presidential elections met the international standards of free elections” is incorrect. The OSCE Election Observation Mission Final Report on the 15 October 2008 presidential elections in Azerbaijan reads that “the presidential election marked considerable progress towards meeting OSCE commitments and other international standards, in particular with regard to some technical aspects of election administration” (OSCE/ODIHR Final Report, page 3, para 2, 15 December 2008).

It is proposed to replace “although the Constitution declares” in the second sentence of this paragraph with “The Constitution declares” and to delete the remainder of the paragraph after that sentence, as it has nothing to do with the mandate of the Congress and the purpose of the present report.

In addition, footnote No. 10 refers to the OSCE/ODIHR assessment of the parliamentary elections, not presidential. Therefore, it is irrelevant.

Paragraph 15

This paragraph describes the composition of the Parliament.

It is proposed to delete the fifth sentence, because it is not based on facts and baseless. It should be noted that the elections to Milli Majlis are held under the majority system.

Paragraph 16

It is proposed to replace the last sentence of this paragraph with the following sentence:

“The Court examines the compatibility of laws, regulations and other normative legal acts with the Constitution and other laws, and provides interpretation of the Constitution and laws.”

Paragraph 18

This paragraph is about local executive authorities.

It is proposed to replace “self-governance” with “governance”, as the local executive authorities are not self-government bodies.

Paragraph 19

This and a number of other paragraphs distort a status of municipalities in Azerbaijan, definition of local self-government and recommend to recognise municipalities as a part of state power and bring a definition of municipality in compliance with the Charter.

Referring to the legislation, report shows that municipalities are “non-public” structures, though this is absolutely not the case. This expression has been removed from the Azerbaijani legislation on 30 December 2004 in accordance with the Congress Recommendation 126 (2003)¹, and local self-government bodies have been provided with a definition of structures performing “a part of state matters”. The state is deemed to share authority with municipalities through the transfer of a part of its powers to them.

Moreover it should be taken into account that there was no any requirement enshrined in the Charter that local self-government bodies should form a part of state authority.

It is therefore proposed to take the afore-mentioned into account in the report.

Paragraph 20

This paragraph states that municipalities are not a part of state power due to the fact that they are not regulated by III Section of the Constitution called “State power” and municipalities are not deemed to be institutions belonging to overall public administration.

The afore-said does not correspond to the reality and should be removed.

Thus, status of municipalities is regulated separately by Section IV of the Constitution and they are one of important bases of state structure of the Republic of Azerbaijan. That section is called “Local self-government” and Article 142 is called “Organisation of local self-government”. Generally, this section sets out basic principles of organisation and operation of local self-government.

Paragraph 21

This paragraph indicates that the Law “On status of municipalities” determines entitlement of municipalities to “non-public” status. This presumption is incorrect, citation taken from the law is incomplete and may not reflect the reality. For instance, function of municipality “to implement some state functions” is used in the second sentence and not in the first one and this is not so important. The expression that “local self-governments are not recognised as parts of the state” is incorrect (see notes for paragraph 19).

Criticism made in respect of the norm strengthening legal status of municipalities in the Constitution (Article 150) creates a misunderstanding. Thus, under that Article, acts adopted by municipality shall be binding upon citizens and legal persons on that territory. If such binding character does not exist, the municipal authority may be undermined.

Paragraph 22

This paragraph indicates a lack of progress in enforcement of a number of the Council of Europe documents in the field of local self-government.

Despite the fact that definition of local self-government was brought in compliance with the Charter, this has not been taken into account in the draft (see notes for paragraph 19);

Assessment of a new wording of paragraph 1 of Article 146 of the Constitution should be removed from the text due to its irrelevance. As it seen from the name of this norm, it was more aimed at provision of independence of municipalities. Also, a number of legal gaps have been removed in that Article. For instance, such important issues as independence of municipalities, their liability before citizens residing in municipal territory, termination of terms of office of municipality members, pre-term dissolution of municipalities have been included into the Constitution for the first time and, thus, a number of gaps have been removed.

Paragraph 23

This paragraph should be amended taking into account relevant notes for paragraphs 19-21 above.

Paragraph 25

This paragraph states that monitoring group did not find any information about regulation of the administrative supervision over activity of municipalities, and the guarantee of the right of municipalities and their associations to join freely international associations.

The question about the ways of central supervision over activity of municipalities has not been responded due to the fact that such question was not asked (see notes for paragraph 105).

Presumptions related to the absence of information about the right of municipalities and their associations to join freely international associations are also groundless. This information has been submitted to the monitoring group, which was reflected in paragraph 176 of the draft report.

Therefore, we propose to remove this paragraph from the text.

Paragraph 27

This paragraph indicates absence of explicit information about local public administration and ambiguity of division of legislative powers between president and parliament.

According to the Constitution of the Republic of Azerbaijan there is only one administrative region in Azerbaijan, namely the Nakhchivan Autonomous Republic. The creation of other administrative regions is not envisaged. Therefore, the statement that the Constitution does not contain explicit provisions on regional public administration is irrelevant (see comments on paragraphs 40 and 41). Along with Article 124 of the Constitution, local public administration is regulated by paragraph 3 of Article 95, paragraph 7 of Article 109.

Powers of Milli Majlis (Parliament) of the Republic of Azerbaijan are regulated by Articles 95 and 96 of the Constitution and powers of the President of the Republic of Azerbaijan are governed by Article 109. The distribution of powers between the President and Parliament are determined as follows:

According to Article 93 (4) of the Constitution not assigning concrete tasks the Parliament identifies obligations and competences of the state bodies, while the President makes a division of obligations and competences between executive bodies.

Based on the above mentioned observations, it is proposed to remove the first and the last sentences of this paragraph.

Paragraphs 29, 30 and 132

These paragraphs analyse the reasons for non-creation of the mayor institutions at the cities of Baku and Ganja.

As regards the establishment of municipalities in the cities of Baku and Ganja, it should be noted that the majority of the hundreds of thousands of IDPs from the territories occupied by Armenia have been settled in Baku and Ganja. This necessitates administrative centralised approach to finding solution to their harsh social problems. Moreover, there are 52 municipalities in Baku and nearly 3 million inhabitants. Thus, the establishment of a unified and effective municipal government in the capital city requires some time.

As a result of the occupation by Armenia, the right of IDPs to form local self-governance has been violated. It is impossible to restore this right in their places of temporary locations, including Baku and Ganja. The solution of numerous social, economic problems of refugees and IDPs are handled primarily by administrative means. And this is one of the main reasons for delay in the establishment of the mayor institution.

In paragraph 29, first line, the name should read “Khazar_u”, not “Khazan”. Please correct.

Paragraph 32

This paragraph casts doubt on the voluntary basis of merger of municipalities.

No cases of breach of principle of voluntarism related to merger of municipalities were detected. Despite this fact, this issue is emphasised in the draft without any arguments. Unfortunately, the fact of amendment of the law related to simplification of merger procedure and other measures is not indicated in the draft. Adoption in 2008 of the law considerably simplified a procedure of merger of municipalities and opened real opportunities for more reasonable realisation of initiative of merger of municipalities. In 2009 local population entitled to voting gathered together and proposed an initiative for merger of municipalities. As a result, relevant municipalities adopted decisions to amalgamate in accordance with that initiative.

National associations of city, town and village municipalities considered proposals from population, analysed social-economic situation of cities, towns and villages and other local particularities and made relevant recommendations. There were 9 regional consultations of chairs of municipalities concerning the issue of merger.

By initiative of the chairs of municipalities, 2,401 meetings with participation of more than 401,000 citizens entitled to vote were held in 1,960 residential places of 1,570 municipalities in 46 cities and regions, and decisions on merger were taken.

Those municipal acts had been submitted to the Ministry of Justice for examination of their lawfulness under the procedure of administrative supervision. Only after that, Milli Majlis adopted a relevant law on merger.

Paragraph 38

The present paragraph indicates that the Congress delegation did not have access to the Law “On joint activity, association, division and termination of municipalities”.

It is not clear why. In fact, all laws of the Republic of Azerbaijan, including the Law “On joint activity, association, division and termination of municipalities” may be found on the Internet, for instance at the website (www.e-qanun.az) of the Ministry of Justice and issued for free-of-charge use. They are also available in the bookshops. The English translation can be provided.

Paragraph 39

This paragraph asserts that there is “informal influence of the executive authorities over municipalities” and that some local authorities should report them.

It is not clear what sort of influence and what type of report. There are no reliable sources or facts. An isolated case is given where someone allegedly told that “local governments cannot take a breath without the approval of the executive body”. This is an irrelevant metaphor. Moreover, this allegation contradicts the next paragraph 39, which acknowledges that some municipalities do not have any direct and permanent connection with the executive authority.

It is therefore proposed to delete this paragraph from the text (see comments for paragraph 155).

Paragraphs 41 and 42

These paragraphs indicate the absence of regional governments and necessity of regionalisation in Azerbaijan.

Azerbaijan did not assume any obligation with regard to regionalisation and the Charter does not provide for any such requirement (see comments for paragraph 27).

Paragraphs 53 and 87

These paragraphs list the type of taxes in the Nakhchivan Autonomous Republic.

It is proposed to add “land tax of legal entities” in the list of taxes enumerated in these two paragraphs.

Paragraph 58

This paragraph implies that elections held in 2009 did not meet international standards.

The following information should be taken into account while evaluating the local elections held in 2009.

In total, 16 political parties took part in the elections. Out of registered candidates 16,755 candidates were nominated by political parties, 147 persons by pressure (supporting) groups, 14,073 persons were self-nominated candidates.

The elections were observed by practically 50,000 observers, including 54 international observers. The media were not required to get accreditation and were free to report about the elections on-site all throughout the voting day. One of the main distinctions of these elections was the increased number of elected youth and women. Thus, they constituted 28.4 and 27.4 percent of all elected persons respectively.

It is also proposed to add the following sentences in this paragraph:

“Due to the continued occupation of the Nagorno-Karabakh region and seven surrounding districts of the Republic of Azerbaijan by the Armed Forces of the Republic of Armenia, it has been impossible to organise local self-governance and local elections in these territories in accordance with the legislation of the Republic of Azerbaijan. Therefore, citizens of the Republic of Azerbaijan from these territories have been deprived of the right to form and vote for municipalities”.

Paragraphs 64 and 65

This paragraph reflects the opinion of the authors that there are informal supervision and domination by local executive authorities over municipalities.

It is groundless and at least surprising that based on comparison of capacities in staff, finances and competences between local executive authorities and municipalities, the authors come to a conclusion that there is informal supervision by local executive authorities over municipalities.

Therefore, it is proposed to delete these paragraphs.

Paragraph 67

This paragraph states that there is ambiguity with regard to the legal-administrative status of municipalities.

In accordance with the Law of the Republic of Azerbaijan “On normative legal acts” (Article 1.0.3 and 4), acts (decisions, orders, etc.) of local self-government bodies form part of the system of legal acts of

the country and have normative legal character. In accordance with Article 80.0.2.6 of the same Article, decisions of local self-government bodies enter into force after being registered with the State Registry of Legal Acts. The same rule is applied to the acts (decisions, orders, etc.) of local executive authorities.

Paragraph 72

According to this paragraph, the Congress delegation observes that the Decree on the approval of the Regulations on local executive authorities signed by the President on 6 June, 2012, minimises the authority of municipalities.

In fact, the mentioned Regulations are the new version of the Regulations of 1999. Thus, the Presidential Decree invalidated the previous Regulations. The new ones aim at improving the functions of the local executive authorities only and in no way minimise the powers of the municipalities.

Paragraphs 86 (see paragraph 57)

Paragraph 88

Though the title of Section 7.2.1. is “Municipal taxes and levies”, there is nothing about municipal levies. Therefore, it is suggested to add a new subparagraph enumerating the following municipal levies as provided for in the Law on local (municipal) taxes and levies of the Republic of Azerbaijan:

Local (municipal) levies are:

- levy on posting of street advertisements in the municipal owned territories, buildings and other premises
- levy on disposal and letting of the municipal property
- levy on fixed and mobile commerce, public catering and other services in the territories under ownership of municipalities
- levy on hotels, sanatoria and health resorts and persons providing tourist services in the territories under ownership of municipalities. This levy is identified as not more than 1.1 AZM/24 hours per person.
- levy on parked cars in specialised parkings owned by legal and physical persons in the municipal territories. This levy is identified as not more than 0.1 AZM/24 hours per vehicle.

Paragraph 94

In this paragraph, it is submitted that “the land tax had not changed over the past 10 years”. This statement is not correct, as a change to the land tax was introduced by the Law on amendments to the Tax Code of the Republic of Azerbaijan on 15 December, 2006. Accordingly, under the amended Article 206 of the Code, the categories of land tax have been increased.

Paragraph 99

In this paragraph, it is submitted that the majority of municipalities, especially those in rural areas, have not yet been provided with offices and administrative facilities.

Municipalities of the country do have relevant offices and administrative facilities. Premises, where municipalities are located, in some cases belong to municipalities, in other cases are rent from other property owners.

Paragraph 102

Though the paragraph reads that “the criteria of distributing state transfers [to municipalities] are not clear”, what exactly seems unclear is not shown. It is worth mentioning that the Law on budget system provides for the clear criteria of allocation of subsidies and subventions which govern the process of distribution of funds.

Therefore, it is proposed to delete the whole remainder of the paragraph after the third sentence.

Paragraph 107

This paragraph indicates that exercise of administrative supervision over activity of municipalities on the basis of applications is unclear.

Under Article 5.0.2 of the Law “On administrative supervision over activity of municipalities”, one of the grounds of commencement of administrative supervision proceedings is the receipt of application from physical or legal person, rights and legitimate interests of whom or which are damaged by the municipality, or application from state bodies. Consequently, facts reflected in the application in the course of proceedings are examined. Where serious legal offences or illegal actions of municipality are detected, examination under administrative supervision proceedings is carried out in accordance with Article 8 of the Law. Where facts of criminal nature are revealed in the activity of municipality, authority exercising administrative supervision may address the case to the competent state body for enforcement of relevant measures.

Where in the course of consideration of the application, contradiction of municipal act to the law is revealed, an appeal is made to the municipality for amendment or cancellation of that act. Where application is not settled by the municipality within the stipulated timeframe, an application is lodged before the court.

Where facts reflected in the application are of disputable nature, written substantiated response should be communicated with the explanation of requirements of the legislation.

It should be noted that the Law “On administrative supervision over activity of municipalities” has undergone the legal scrutiny of the Council of Europe and German Technical Cooperation Society (GTZ) and it has been adopted taking into account their opinions and proposals.

Paragraph 108

This paragraph indicates that it is not clear which “particular administrative authority” will be exercising administrative supervision over activity of municipalities.

Under paragraph IV of Article 93 of the Constitution, “concrete tasks to the executive power bodies and the judiciary cannot be stipulated in laws as well as resolutions adopted by Milli Mejlis”. Accordingly, names of the executive bodies are not mentioned in the laws of the Republic of Azerbaijan. Determination of the relevant executive body falls within the competence of the President of the state.

In accordance with the Order of the President dated 27 September 2003 on application of the Law of the Republic of Azerbaijan “On administrative supervision over activity of municipalities”, powers of “relevant body of executive power” mentioned in the draft report are being carried out directly and only by the Ministry of Justice.

Bearing the afore-said in mind, the last two sentences of this paragraph should be removed from the text.

Paragraph 117

This paragraph points to the obligatory character of integration of local government system.

Taking into account the fact that this approach is incorrect, it is proposed to remove the last sentence (see notes for paragraph 32).

Paragraph 119

The first sentence of this paragraph indicates that provisions of the Law “On status of municipalities” relating to the “judicial protection of local self-government” reinforces the presumption that municipalities do not belong to the state organisation system.

Under Article 4.1 of the Civil Procedural Code of the Republic of Azerbaijan, “All physical and legal persons shall, in accordance with the procedure specified by law, be entitled to exercise the right to appeal to the court for protection of their rights and freedoms, as well as for protection of interests guaranteed by law”. This right is also reiterated in the Administrative Procedural Code of the Republic of Azerbaijan. Under the law, along with state bodies, municipalities are entitled to exercise the right to appeal to the court. Otherwise, provision of rights may be weakened.

Therefore, it is proposed to remove the first sentence of this paragraph from the text.

Paragraph 122

This paragraph states that municipalities do not have a right to lodge a complaint with the Constitutional Court.

According to the provisions of the Constitution of the Republic of Azerbaijan and the Law of the Republic of Azerbaijan on “Constitutional Court”, municipalities may not directly lodge a complaint with the Constitutional Court. However, there is no limitation for municipalities to lodge a complaint with the Constitutional Court through subjects (state institutions) indicated in Article 130 of the Constitution.

Paragraph 127

This paragraph points to the failure to clarify legal consequences of local public opinion survey.

Issues related to the arrangement of local public opinion survey are regulated by the Law “On local public opinion survey”. Article 4 of this Law is called “legal effect of results of local public opinion survey”. Under this Article, “municipality shall be obliged to adopt a relevant decision for the entry into force of those results. Results of the local public opinion survey shall constitute a basis for that decision. Decision of municipality shall be binding in the municipal territory”.

In accordance with the afore-said, we propose to make relevant adjustments to the last sentence.

Paragraph 128, 129

This paragraph indicates legal gaps in regulation of direct citizen participation in local self-government.

This paragraph did not take into account measures carried out by the Government of Azerbaijan. Thus, a new wording of paragraph 2 of Article 16 of the Law “On status of municipalities” was adopted and a new paragraph 6 was inserted into that Article by the Law dated 25 October 2011 in order to strengthen provision of direct citizen participation in local self-government and eliminate gaps existing in the law.

New law regulates in detail the mechanism of holding municipal meetings summoned by the initiative of citizens. This new law has further improved legal regulation related to citizen participation in local self-government.

Paragraphs 139-141

These paragraphs should take into account notes as regards paragraph 19.

Paragraph 142

It is proposed to remove this paragraph from the text (see notes for paragraph 41).

Paragraph 144

This paragraph indicates that no amendments were made to the legislation in order to increase rights and obligations of municipalities. But the citation refers to the situation before 2003.

A lot of important changes have been made since that to the laws regulating local self-government. Full and exclusive powers of municipalities were increased within the period following the Congress Recommendation 126 (2003).

Therefore, it is proposed to amend this paragraph or to remove, at least, the expression “no change has occurred” due to the fact that this does not reflect the reality.

Paragraph 153

It seems from the text of this paragraph that no measures were taken for improvement of professional training of municipal members and staff. This is not the case.

Therefore, it is proposed to replace in the last sentence the expression “take also effective measures” with the expression “increase the efficiency of measures”.

Paragraph 156

It is proposed to remove this paragraph from the draft (see notes as regards paragraph 106).

Paragraph 157

This paragraph reflects on the obligation of municipalities to report to the Parliament and on informal supervision of municipalities by local executive authorities.

The regulation of reporting of municipalities to the Parliament was added to the Constitution following the referendum. At present, a draft law on that reporting system is under preparation. As the law has not yet been applied, it is premature to call this obligation “pointless” and “unnecessary”.

Both under legislation and in practice, none of state bodies is entitled to carry out supervision of municipalities in one or another form, except for the body exercising administrative supervision over activity of municipalities. To date no such cases were revealed in practice.

Therefore, it is proposed to lift the first and last sentences and amend accordingly the rest of the paragraph.

Paragraphs 172 and 173

These paragraphs indicate the necessity of strengthening effectiveness of national associations.

National associations carry out multifaceted activity in order to enforce obligations assumed in the field of development of local self-government and local democracy. In conformity with their Regulations, municipalities organise meetings of their chairs, conferences on the topic of development of municipalities, round tables, various seminars and trainings to raise knowledge and professional level of chairs and members of municipalities, and make relevant recommendations.

Representatives of national associations participate in the improvement of legislation related to local self-government issues; submit opinion and proposals raise issues before state bodies. Country-wide meetings of municipality chairs were held in 2007 and 2008 with their initiative and under their auspices in order to strengthen the role of municipalities in solution of socio-economic problems. Meetings were attended by the Head and officials of the Presidential Administration, ministers, committee chairpersons, members of Milli Majlis, representatives of local bodies of executive power, chairpersons of municipalities and national associations, Special Representative of the Secretary General of the Council of Europe and representatives of non-governmental organisations. Activity of municipalities was widely discussed at those meetings; implemented measures, positive achievements and shortcomings were noted and obligations standing before municipalities were identified. The meetings made recommendations on establishment of more institutions and service sectors for municipalities, development of trainings for municipal members and staff, as well as on municipal marketing, efficient management of municipal property and other issues.

Azerbaijani municipalities joined and paid special attention to the activity aimed at the enforcement of the decision on the Local Democracy Week in Europe. In order to ensure coherent and consistent organisation of the Local Democracy Week, sessions for chairs of municipalities were organised with the initiative of national associations of municipalities, and relevant recommendations were given to municipalities with regard to the arrangement of that week. Involvement of our country in the Local Democracy Week in Europe was marked in the Valencia Declaration.

An initiative of municipalities called “One municipality – at least one project” has created grounds for solution of local problems, municipalities are engaged with, in a more effective, consistent and meaningful way. Within the framework of this project, taking into consideration the social needs of citizens, in 2011 municipalities implemented 4,049 projects in the areas of social protection, economic development and environment, and implementation of 4,310 projects is envisaged for the year 2012.

By joining initiatives “Renovated quarter” and “Renovated village”, municipalities have contributed to the renovation and landscaping of territories. 63 quarters and 51 villages have been awarded the titles of “renovated quarter” and “renovated village”.

Knowledge raising and professional training for chairs and members of municipalities is always in the focus of national associations. In conjunction with the Centre for Work with Municipalities of the Ministry of Justice, they conduct seminars on issues, such as local taxes and levies, local budgets, etc., as well as organise trainings on the development of draft programmes on local social protection, social and economic development, environment, and co-operation with sponsor organisations.

National associations pay great attention to the exchange of best experiences between municipalities. For this purpose, a republican conference called “Municipality: New form and new contents” was held with participation of chairs of municipalities. The best experiences in 11 main directions of the functioning of municipalities were studied. Following the conference, a booklet under the same title was published and distributed among all municipalities. At the same time, national associations organised a study trip for chairs of municipalities to Germany and Latvia with the aim of learning the best practices in local self-government of European states.

National associations render municipalities with methodological and organisational assistance for the establishment of direct bilateral co-operation with municipalities of other countries. As a result, a number of municipalities of Azerbaijan, Turkey and Latvia have signed bilateral protocols on “twinning municipalities”.

Paragraph 180

This paragraph indicates that no real changes occurred in the field of local self-government in Azerbaijan after recommendation adopted by the Congress in 2003.

It is proposed to replace the expression “no real changes have occurred” with the expression “occurred changes were of low effect” in the fourth sentence of this paragraph.

Paragraph 183

See notes for paragraph 19.

Paragraph 187

This paragraph states that despite some state measures to train, retrain and enhance the qualification level of municipal employees, the staff capacity of municipalities remains weak.

Due to some contradiction of the first sentence with the second one, it is proposed to replace the phrase “develop effective measures to launch capacity-building and proper training programmes” with the wording “increase efficiency of measures to launch capacity-building and proper training programmes”.

At the same time, it should be noted that effective measures have been taken to train members and staff of municipalities and to raise their professional level. Thus, various seminars and workshops are organised for members and staff of municipalities. Necessary methodical booklets are prepared and sent to municipalities. Each year approximately 80 training courses are conducted with involvement of more than 5,000 members and staff of municipalities.

Paragraph 189

It is proposed to remove this paragraph from the draft (see notes for paragraph 108).

Paragraph 190

It is proposed to remove third sentence from the text (see notes for paragraph 157).

Paragraph 197

See notes for paragraphs 172 and 173.

Paragraph 198

This paragraph states that Azerbaijan declares itself not bound by a number of paragraphs of the Charter and that Azerbaijan fails to comply with other provisions of the Charter.

It is proposed to remove the bracket “as in the case of some other provisions”. Otherwise, it creates impression that Azerbaijan is not fulfilling the provisions it is bound by too.

Paragraph 200

It is proposed to delete this paragraph (see paragraphs 206-210).

APPENDIX 1. INFORMATION ON HUMAN RIGHTS AND LOCAL AUTHORITIES

Paragraph 206

This part analyses the situation with human rights in Azerbaijan.

The opinion in this paragraph that “the state of human rights in Azerbaijan has been frequently criticised by the international community in the recent years” does not correspond to the reality and is unjustified generalisation. There are no references or footnotes to reliable sources in the draft report. Criticism by some international organisations touched upon only certain areas of human rights. At the same time, there have also been positive assessments of the developments in the area of human rights, democracy and the rule of law in Azerbaijan given by various international organisations, such as UN, EU, Council of Europe and OSCE (see for instance the documents of PACE (Doc. 12270) and Committee of Ministers AGO Monitoring Group (CM(2009)180).

In addition, as the report itself mentions most of those criticisms did not affect the activities of local authorities. Given that the Rapporteurs did not have a mandate to examine alleged violations of human rights; it is surprising that this sort of information is given in the report.

Therefore, it is proposed that paragraphs 206-215 of this Appendix be excluded from the present document.

Nevertheless, the following comments are deemed necessary to make.

Paragraphs 206-210

In these paragraphs, the issue of eviction of about 10,000 (please check against paragraph 198, which states that there are 60,000) residents and expropriation of their properties is extensively raised. Thus, four paragraphs of the report are devoted to this matter.

First of all, we think that this is unwarranted. Then, we submit that all citizens whose properties were demolished in accordance with the General City Plan (dating back to 1988, not 1978 as indicated in the draft report) have been compensated the amount of 1,910 USD per square metre or provided with adequate property in other parts of the city. Most citizens remained satisfied. However, a small group of people demanded compensations higher than real market prices. They distorted the facts, exaggerated the matter and tried to attract attention of international organisations.

Furthermore, we do not see the reason to include the allegation that immigrants lost their properties. It is not clear what immigrants and what happened exactly. Further clarification is needed, or alternatively we propose to delete it.

Contrary to the argument in the draft report, there is a clear-cut legal basis, including the most recent Decision of the Cabinet of Ministers of 24 February 2012 setting out the rules of relocation and compensation. According to these rules, the residents should be informed at least one year in advance about the forthcoming eviction, and decision on demolition of properties should be taken publicly and in consultation with residents. Last but not least, residents should be paid adequate amount of compensation based on precise calculations.

Indication that about 10,000 residents lost their homes in the past years due to “beautification” is not real and some assertions here are contradictory. Firstly, it is not convincing that the delegation of the monitoring has been able, for a short period of time, to thoroughly examine the facts and come to a concrete conclusion concerning the violation of rights of 10,000 persons. Secondly, paragraph 205 admits that many evicted persons did not have a legal title to their homes, whereas the next paragraph 207 asserts the protection of the right to private property. There is certain contradiction. And thirdly, these issues do not fall within the competence of the monitoring delegation of the Congress.

Facts demonstrate that most of persons who complained have indeed illegally constructed properties on the plot of lands where construction is forbidden for the reason of safety, public health, etc. By having obtained a title to those properties they started demanding extra compensation and this was contrary to law. Therefore, if the monitoring group has concrete facts, they should be examined in order that necessary measures will be taken.

Everyone has a right to lodge an application before the court concerning his or her property right. The courts are obliged to consider such applications. At the same time, according to Article 130 of the Constitution of the Republic of Azerbaijan, for resolution of issues indicated in paragraph III.1-7 of this Article by the Constitutional Court, in accordance with the procedure specified by law, any citizen of the Republic of Azerbaijan may submit a complaint to the Constitutional Court in order to restore the rights and freedoms violated by means of legal and normative acts of executive authorities, acts of municipalities and courts.

According to Article 34.5 of the Law of the Republic of Azerbaijan “On Constitutional Court” if legal protection of constitutional rights by courts of ordinary jurisdiction cannot prevent from causing serious and irreplaceable damage to the complainant then his or her complaint can be submitted directly to the Constitutional Court.

Paragraph 211

In this paragraph, there are allegations of violation of freedom of expression which are not based on facts. Again, there are no reference to reliable sources and footnotes in the draft report.

It is worth mentioning that press censorship was abolished in Azerbaijan in 1995. The media are free in Azerbaijan and journalist can enjoy the freedom of expression without any interference. The majority of the population in Azerbaijan are Internet-users. There are more than 55 political parties in Azerbaijan and the overwhelming majority of them have their own printing media and websites, where they criticise both the government and public officials.

The allegations on interference with the journalist activity and harassment of journalists are investigated by the law-enforcement agencies and if such allegations are found credible, all necessary legal measures are taken. The draft law on defamation is under consideration and expected to be adopted by Milli Mejlis this year.

There is no obligation set out in the national legislation as to the state registration of the printing media. In other words, printing media can be established without prior consent from the public authorities. A facilitated procedure of registration of applications on the establishment of printing media is carried out by the Ministry of Justice. So far, 4,652 printing media have been registered with the Ministry.

Paragraph 213

This paragraph states about the impairment to the exercise of the freedom of assembly, in particular during the election campaign.

The protection and promotion of the freedom of assembly is regulated by Article 49 of the Constitution and the Law on "Freedom of Assembly". Amendments to the latter were made in consultation with and positive opinion of the Council of Europe Venice Commission. According to the law, the organisers of manifestations and rallies should inform the relevant executive authority about the place, time and itinerary at least 5 days in advance. The law does not require any obtaining of permission.

During the last few months opposition has held several manifestations in the specified places. Information about this can be found in the recent OSCE spot reports. Many of the meetings took place peacefully and without confrontation with the police. Only unlawful meetings were prevented by the police but in compliance with the law and the European Convention on Human Rights. No excessive use of force was applied.

At the same time, the following information should be taken into consideration.

Being an important part of the electoral campaign, candidates are provided with 4,930 (2,676 open, 2,254 closed) locations for meetings with the electorate before elections as set out by the Electoral Code of the Republic of Azerbaijan (list of locations are published on the Central Election Commission's website and in the press). By informing constituent election commissions, candidates may use these locations free of charge. In general, during all electoral campaigns, necessary conditions were created so that candidates could meet their electorate and deliver their messages.

Paragraphs 214 and 215

There is no provision in the national legislation that makes the state registration of NGOs compulsory. Thus, they can function freely even without state registration.

However, state registration of NGOs is provided for in the Law "On non-governmental organisations (public associations and funds)" and the Law "On state registration of legal entities and state registry". In accordance with these laws, the state registration is carried out under simplified and short-term procedure. If the state registration of an NGO is rejected, an exhaustive description of the reasons of that rejection detailing *inter alia* the norms of the national legislation serving as a ground for rejection is provided to the founders in a written form.

The Government keeps in focus such issues as the freedom of association and development of the civil society. The President of the Republic of Azerbaijan endorsed the Concept of State Support to NGOs on 27 July 2007. The special Council for the State Support to NGOs under the President of the Republic of Azerbaijan was established by a Presidential Decree of 13 December 2007. The Council adopted the Regulations on competition for financial support to NGOs on 14 January 2009. Every year, hundreds of NGOs receive grants for their projects from the state budget under these Regulations.

In accordance with Article 12.3 of the Law on "On-governmental organisations (public associations and funds)", the state registration of branches and representations of foreign NGOs is carried out in the framework of agreement concluded with those NGOs. The principles of functioning of branches and representations of foreign NGOs in Azerbaijan are governed by the Regulations on conducting negotiations and concluding agreements for the state registration of branches and representations of foreign NGOs in the Republic of Azerbaijan endorsed by the Decision of the Cabinet of Ministers on 16 March 2011.

Such an agreement, which is based on mutual consent, provides for the obligations assumed by each of the parties, and is concluded with the organisation in the name of the State. It regulates the relations between the NGO and the State of Azerbaijan, and provides for vast opportunities for functions and activities of NGOs in Azerbaijan.

By July 2012, 2,786 NGOs had been registered with the Ministry of Justice, of which 2,596 were public associations and 190 were funds. Moreover, 106 branches and representations of foreign legal entities, including NGOs, operate in Azerbaijan.

It should be mentioned that Azerbaijan has been distinguished on many occasions as one of the most tolerant countries in the world with respect to various religions and confessions. There is a long-established tradition of mutual understanding and respect among several (Muslim, Christian, Jewish and other) religious confessions in Azerbaijan. The Azerbaijani State and its Head explicitly support free functioning of religious entities in Azerbaijan and take necessary steps for that.