

**40th SESSION**  
**Second part**

Report  
CG(2021)40-21final  
17 June 2021

*Original: English*

## Monitoring of the application of the European Charter of Local Self-Government in Azerbaijan

Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee)

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### Summary

This report follows the third monitoring visit to Azerbaijan since the country ratified the European Charter of Local Self-Government in 2002.

It welcomes some improvements that were identified in Azerbaijan such as the ratification of Article 10.3 of the Charter following the adoption of the previous Congress recommendation; the improvement of the quality and transparency of the work of municipalities; the use of the delegation of functions to municipalities for the first time in 2020; and the increased representation of women and youth in municipal councils after the last municipal elections in 2019.

Nevertheless, major concerns remain as to a number of factors that impair the development of local self-government in Azerbaijan. Local authorities do not conform with basic democratic principles and do not benefit from the principles of autonomy laid down in the Charter. To quote a few examples, municipalities in Azerbaijan are not considered state institutions which exercise public services as part of overall public administration but rather an expression of civil society; the distribution of powers and functions between municipalities and local executive authorities as well as their factual relations remain ill-defined; the powers of municipalities is not full and exclusive; no separate law exists on the capital city, and Baku remains the only capital city in the Council of Europe area with no directly elected governance; consultation of municipalities and of their weak national associations is not an established practice and is not regulated in detail in the legislation; it remains a challenge for municipalities to hire qualified staff, also due to non-competitive salaries and limited personal development opportunities; municipal own revenues are largely insufficient to fulfil the functions entrusted to municipalities by legislation; the legislation still provides that municipalities must report to parliament on their activities, and

1. L: Chamber of Local Authorities / R: Chamber of Regions.  
EPP/CCE: European People's Party Group in the Congress.  
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats.  
ILDG: Independent Liberal and Democratic Group.  
ECR: European Conservatives and Reformists Group.  
NR: Members not belonging to a political group of the Congress.

the right to judicial protection is limited and not used by municipalities. Finally, in the context of the COVID-19 pandemic, municipalities have been completely side-lined and their budget has been considerably reduced

Consequently, the recommendation invites the Azerbaijani authorities, among other things, to unambiguously recognise municipalities as state institutions exercising public power as part of the overall public administration; to amend the Law on the Status of Municipalities and the other laws transferring tasks and functions to municipalities by ensuring that the powers and duties entrusted to municipalities are full and exclusive; to adopt a law on the status of the capital city and establish a unified and democratically elected municipal government in Baku; create a legislative framework for consultation of municipalities and their associations in the process of drafting legislation relevant to them; to complete the process of repealing from legislation the obligation for municipalities to report to parliament on their activities and adopt a law regulating reporting by municipalities; to reduce financial dependence of municipalities from the state by increasing and making sustainable their own revenues, to ensure that the right to judicial protection of municipalities is guaranteed in practice. Lastly, national authorities are called, in dealing with the COVID-19 pandemic, to make sure that municipalities are involved and that their financial resources are not disproportionately impacted.

A resolution has also been elaborated which invites the Congress to continue to closely follow the state of progress of local democracy in Azerbaijan and to expand its political dialogue with Azerbaijani authorities in the framework of post monitoring process.

**RESOLUTION 473<sup>2</sup>**

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

*a.* Azerbaijan joined the Council of Europe on 25 January 2001, signed the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 21 December 2001 and ratified it with reservations on 15 April 2002 (Articles 4.3; 7.2; 9.5; 9.6; 10.3). The Charter entered into force in Azerbaijan on 1 August 2002;

*b.* The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local and regional democracy in Azerbaijan in the light of the Charter. It instructed Bernd Vöhringer, Germany (L, EPP/CCE) and Stewart Dickson, United Kingdom (R, ILDG), with the task of preparing and submitting to the Congress a report on local and regional democracy in Azerbaijan;

*c.* The monitoring visit took place remotely from 23 to 25 February 2021. During the visit, the Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the visit is appended to the explanatory memorandum;

*d.* The present resolution is elaborated in accordance with Congress priorities set up for 2021-2026, in particular priority 6b that concerns the quality of representative democracy and citizen participation.

2. The Congress expresses its concern that its previous reports in 2003 and 2012, respectively, raised recurring shortcomings regarding the situation of local and regional democracy in Azerbaijan and the limited implementation of the European Charter of Local Self-Government which make these recommendations still valid.

3. In the light of the above, the Congress:

*a.* resolves to continue closely following the state of progress of the local and regional democracy in Azerbaijan, through a regular item on the agenda of the Monitoring Committee meetings;

*b.* undertakes to expand its political dialogue with the Azerbaijani national authorities in the framework of a post-monitoring process, so that they comply with the provisions set out in the Charter, in particular when implementing Congress recommendation on local and regional democracy (2021).

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<sup>2</sup> Debated and adopted by the Congress on 17 June 2021, 3rd sitting (see Document CG(2021)40-21, explanatory memorandum), co-rapporteurs: Bernd VÖHRINGER, Germany (L, EPP/CCE) and Stewart DICKSON, United Kingdom (R, ILDG).

## **RECOMMENDATION 461<sup>3</sup>**

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

*a.* Article 2, paragraph 1.b, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, stipulating 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 1, paragraph 2, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, stipulating 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 the effective implementation of the principles of the European Charter of Local Self-Government”;

*c.* Chapter XVIII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

*d.* The Congress priorities set up for 2021-2026, in particular priority 6b that concerns the quality of representative democracy and citizen participation;

*e.* Sustainable Development Goals (SDG) of the United Nations 2030 Agenda for Sustainable Development, in particular Goals 11 on sustainable cities and communities and 16 on peace, justice and strong institutions;

*f.* Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

*g.* Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;

*h.* Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities’ activities, adopted on 4 April 2019;

*i.* previous Congress Recommendation 326 (2012) on the monitoring of the European Charter of Local Self-Government in Azerbaijan, adopted on 17 October 2012;

*j.* the explanatory memorandum on the monitoring of the European Charter of Local Self-Government in Azerbaijan.

2. The Congress points out that:

*a.* Azerbaijan joined the Council of Europe on 25 January 2001, signed the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”) on 21 December 2001 and ratified it with reservations on 15 April 2002 (Articles 4.3; 7.2; 9.5; 9.6; 10.3). The Charter entered into force in Azerbaijan on 1 August 2002;

*b.* The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local and regional democracy in Azerbaijan in the light of the Charter. It instructed Bernd Vöhringer, Germany (L, EPP/CCE) and Stewart Dickson, United Kingdom (R, ILDG), with the task of preparing and submitting to the Congress a report on local and regional democracy in Azerbaijan;

*c.* The monitoring visit took place remotely from 23 to 25 February 2021. During the visit, the Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the visit is appended to the explanatory memorandum;

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<sup>3</sup> See footnote 2

*d.* The co-rapporteurs wish to thank the Permanent Representation of Azerbaijan to the Council of Europe and all those whom they met during the visit.

3. The Congress notes with satisfaction that in Azerbaijan:

*a.* On 13 November 2013 Article 10.3 has been included in the list of Charter provisions that are binding in the country;

*b.* in the last decade, the legislation relevant to local self-government has been partly amended introducing some improvements, including in the system of financing municipalities and in the merit-based selection of municipal staff;

*c.* an Automated Municipality Information System has been introduced, making payments to and by municipalities electronic and thereby enhancing transparency and improving the collection of local taxes and fees;

*d.* for the first time, in 2020 the government made use of the opportunity to delegate functions to municipalities, allocating corresponding funds;

*e.* the process of amalgamation of smaller municipalities continues in an uncontroversial way;

*f.* in the last municipal elections in 2019 the number of female and young representatives in the municipal councils has significantly improved.

4. The Congress expresses however its concerns on the following issues:

*a.* municipalities remain unable in practice to exercise the basic functions attributed to them by legislation; in particular, the distribution of powers and functions between municipalities and local executive authorities as well as their factual relations remain ill-defined and this is detrimental to the development of democratically accountable local self-government as prescribed by the Charter;

*b.* local social, economic and environment programmes may be aimed at resolving issues not covered by the relevant state programmes and this makes the powers of municipalities not full and exclusive as required by the Charter;

*c.* no separate law exists on the capital city, which remains the only capital city in the Council of Europe area which has no directly elected governance;

*d.* land maps indicating precise borders of municipalities are not yet available in some municipalities, giving rise to some controversy as to the resources produced on a piece of land whose classification is not clear;

*e.* consultation of municipalities and their national associations, while taking place informally, is not an established practice and is not regulated in detail in the legislation;

*f.* conversely, legislation provides for several instruments that would allow citizens' participation in the life of municipalities, but they are only sparingly used; the ratification of 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) could help improve the practice of citizens' participation in the country;

*g.* it remains difficult to hire qualified staff for municipalities, which offer less attractive jobs than the state administration, also due to non-competitive salaries and limited personal development opportunities;

*h.* the procedure for dismissal of the chair of the municipalities for the cases in which he/she can be removed from office is not sufficiently specified in legislation;

*i.* despite previous calls on the authorities to repeal the provision, and despite an amendment that restricted the cases in which this happens, the legislation still provides that municipalities must report to Parliament on their activities; at the same time, a comprehensive law regulating reporting by municipalities has not yet been adopted;

*j.* municipal own revenues remain largely insufficient to fulfil the functions entrusted to municipalities by legislation and prevent municipalities from taking up activities in areas formally open to them; municipalities

also have no power to determine the rate of their own taxes and are overall financially dependent from the state;

*k.* the right to judicial protection is provided against, rather than for, municipalities, as in practice municipalities rarely challenge acts in court, while are sometimes suited for violation of rights of citizens, especially on property and land issues, due to the unclear division between state-owned and municipal-owned land;

*l.* in the context of the COVID-19 pandemic, municipalities have been completely sidelined and their budget has been considerably reduced.

5. In light of the foregoing, the Congress requests that the Committee of Ministers invite the authorities of Azerbaijan to:

*a.* unambiguously recognise municipalities as state institutions exercising public power as part of the overall public administration; clarify in legislation the relations between municipalities and local state executive bodies, as well as the overlapping responsibilities between municipalities and local executive authorities which currently create a condition of de facto subordination of the former to the latter;

*b.* amend the Law on the Status of Municipalities and the other laws transferring tasks and functions to municipalities by ensuring 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;

*c.* adopt a law on the status of the capital city and establish a unified and democratically elected municipal government in Baku;

*d.* complete the process of drawing maps of the municipal lands and resolve the remaining issues related to the division between state-owned and municipal-owned land, indicating size and borders of each municipal territory;

*e.* create a legislative framework for consultation of municipalities and their associations in the process of drafting legislation relevant to them and more broadly to local issues;

*f.* support the use of instruments of citizens' participation, including when continuing the process of amalgamation of municipalities and when addressing the issue of local government in the re-integrated territories; ratify 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) ;

*g.* improve the working conditions for municipal staff, including in terms of salaries and liability, in order to make civil service in the municipalities attractive for qualified personnel;

*h.* specify the dismissal procedure of the chair of the municipalities for the cases in which he/she can be removed from office;

*i.* complete the process of repealing from legislation the obligation for municipalities to report to parliament on their activities and adopt a law regulating reporting by municipalities, in line with Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities;

*j.* reduce financial dependence of municipalities from the state by increasing and making sustainable their own revenues, by allowing municipalities to determine the rates of their taxes and by granting that the principle of concomitant financing be ensured in case of state transfers;

*k.* ensure that the right to judicial protection of municipalities is guaranteed in practice, in particular by resolving the pending land and property issues that give rise to claims for liability against municipalities and their representatives;

*l.* in dealing with the COVID-19 pandemic, make sure that municipalities are involved and that their financial resources are not disproportionately impacted.

6. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation on the monitoring of the European Charter of Local Self-Government in Azerbaijan and the accompanying explanatory memorandum in their activities relating to this member State.

**EXPLANATORY MEMORANDUM**

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## INTRODUCTION: AIM AND SCOPE OF THE VISIT, TERMS OF REFERENCE

1. Pursuant to Article 1, paragraph 3, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, 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 the effective implementation of the principles of the European Charter of Local Self-Government.”

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. The latter provision has been ratified in 2013. 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”. National Authorities indicated during the consultation procedure that this situation is likely to evolve as a result of the 2020 conflict and ceasefire brokered in November 2020.

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;

d. on 21 June 2013, Article 10.3 of the European Charter of Local Self-Government, which was initially excluded from the list of provisions Azerbaijan declared itself bound by.

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 Stewart DICKSON (United Kingdom, R, ILDG) and Mr Bernd VÖHRINGER (Germany, L, EPP/CCE) as rapporteurs and tasked them to prepare and submit to the Congress a report on local and regional democracy in Azerbaijan<sup>4</sup>, updating the latest Resolution 345 and Recommendation 326 (2012).

6. The visit to Azerbaijan took place from 23 to 25 February 2021 and was carried out online, due to travel ban related to the Covid-19 pandemic. 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 local 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 before and 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, including desk research.

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<sup>4</sup> The two co-rapporteurs were assisted by Professor Francesco Palermo, consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government and constitutional adviser to the Congress, and the secretariat of the Monitoring Committee of the Congress.

9. According to Rule 88-3 of the Rules and Procedures of the Congress of Local and Regional Authorities of the Council of Europe, the preliminary draft report was sent on 29 March 2021, to all interlocutors met during the visit for comments and possible adjustments or corrections (hereinafter referred to as “consultation procedure”). The present report is based on the comments received during the consultation procedure, which have been considered by the co-rapporteurs before submission for approval to the Monitoring Committee.

## 2. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

### 2.1 Local government system

10. The Constitution of the Republic of Azerbaijan (*Azərbaycan Respublikasının Konstitusiyası*), adopted in 1995, declares the Republic of Azerbaijan to be a unitary state. Only the Nakhchivan Autonomous Republic has a special legal-administrative status within the country. The state administration is a centralised system under the president, in whom the entire executive power is vested. It is divided into central and local executive authorities, which exist in 63 districts (*rayons*), towns, settlements and villages. Local self-government is not part of the state administration and consists in municipalities, that are established in 78 towns (*şəhər*), 14 urban districts, 261 settlements (*qəsəbə*), and 4248 rural settlements (villages).<sup>5</sup>

11. Local self-government is regulated in Section 4 of the Constitution (Chapter IX, on “Municipalities”, articles 142-146), which contains provisions on the organisation, powers and functions of municipalities as well as guarantees of their independence. A separate chapter (Chapter VIII, articles 134-141) is devoted to the Nakhchivan Autonomous Republic and comprises provisions on its constitutional status, its institutional organization and the division of powers within the Autonomous Republic.

12. The Constitution does not explicitly declare whether local government<sup>6</sup> is founded on the principle of decentralization of state authority or on the principle of local autonomy. It neither explicitly defines local self-government and simply refers to it as being “carried out by municipalities” (*bələdiyyə*), which are elected bodies (Article 142(I) and (II)). In particular, the Constitution does not regulate local self-government in Section III on “State power”, which implies that municipalities are not included among the public authorities exercising state power (the Nakhchivan Autonomous Republic instead is).

13. Municipalities thus are not fully-fledged structures of the state power, nor are they part of the overall public administration. Rather, as established by the Law on the Status of Municipalities, they are a special form of the social activity of the citizens, albeit “performing part of state affairs”. The delegation was informed that the government maintains that municipalities are part of the state power and are institutions of the public administration, since they perform public functions and all public functions are delegated from the state. At the same time, the rapporteurs note that the relevant constitutional and legislative provisions do not establish the principle of local autonomy nor do they include the main elements of the Charter’s definition of local self-government, since they do not establish the right of local authorities to regulate and manage local public affairs nor the concept of the interest of the local population.

#### ***The structure of local government***

14. Article 124 of the Constitution provides that local executive authority is exercised by the heads of local executive bodies. According to Chapter IX of the Constitution local self-government is carried out by municipalities.

15. Local executive authorities (LEA, also referred to as ExComs) are territorial branches of the state administration in regions, cities and city districts and are run by chief executives who are appointed and dismissed by the President of Azerbaijan, who also determines the powers of these bodies. For example, a presidential decree adopted in 2012<sup>7</sup> has provided local executive authorities with almost all the functions of local government, including some that under other laws would fall within the scope of the powers of

5 Source: website of the President:

<https://static.president.az/media/W1siZiIsIjwMjAvMDUvMTUvNjk3ZnhmcDI4eV9FaGFsaV9FTkdfRmluYWwucGRml1d?sha=8a345204bc32ef52>; Presidential library <https://files.preslib.az/projects/azerbaijan/eng/gl2.pdf>.

6 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. Therefore, the term “local government” includes both the municipalities and the “local executive authorities” which are the local units of state administration and it is used in this report only when both entities are meant.

7 Presidential Decree No. 648, “Charter of Executive Bodies” dated 6 June 2012.

municipalities. 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 municipalities, 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. It follows that all important issues affecting the life of the local communities are decided by the centralised state administration rather than by the elected representatives of these communities.

16. According to the Charter of Executive Bodies of 2012 and successive amendments, such bodies appoint local administrations in the villages and settlements situated within their territory. Heads of local state administration carry out executive duties in regions, cities and city districts; ensure rights and freedoms of citizens; promote the economic, social and cultural development of a given territory; and coordinate the activities of municipalities and territorial divisions of state administration.

17. As per Article 142(II) of the Constitution, all municipalities have an elected council. The detailed rules of municipal elections are determined by law, especially by the Electoral Code of 2003, as subsequently amended. Municipal councils are elected in general, direct, free, equal, and secret elections in which all residents who have reached the age of 18 are entitled to vote. All citizens at least 18 years old (until 2017 the age limit was at 21) 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 and it is incompatible with other elective mandates.

18. Municipal councillors are elected in multi-mandate constituencies with a relative majority voting system. The number of councillors depends on the size of the municipality's population and varies from 5 to 19. The first municipal elections were held in December 1999. Further elections took place between the first (2003) and the second (2012) monitoring of the charter, in 2004 and 2009, and two more after the last monitoring, in 2014 and 2019. Overall, municipal elections attract very low public attention. According to the Central Election Commission, voter turnout in the 2019 municipal elections was 33% across the country. About 15,000 members of municipal councils were elected in the 1,606 municipalities. Although 13 political parties were represented, most opposition parties chose not to participate. According to some sources,<sup>8</sup> there have been electoral violations and irregularities and the turnout was no more than 21%, much lower than reported by the Central Electoral Commission. During the consultation procedure, the government stressed that the turnout has been higher, and recalled that the elections have been monitored by 17 international and 52,636 local observers. The rapporteurs do not take a stand on the issue and simply refer to the available documents and reports. As a matter of fact, all municipal elections held so far have been criticised by international and domestic observers for not meeting the European standards of free and fair elections.

19. Members of municipal councils are directly elected by the citizens, and the chairs of these councils are elected by the council members (indirect election).<sup>9</sup> Municipalities adopt their own municipal code which 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. Municipalities may approve their budget and possess, use and dispose of municipal property. They are entitled, as determined by law, to levy municipal taxes.

20. In turn, local functions are split between municipalities with their elected authorities, and state executive authorities at local level, which are accountable to the state power. Each municipality acts as an independent juridical entity, with formally neither horizontal nor vertical subordination. Despite the fact that the government argues that the absence of subordination is substantial and not merely formal, the rapporteurs consider that on paper separation of functions does not suffice to establish it also in practice. In addition, the situation on the ground puts municipalities in a de facto condition of subordination to the executive authorities.

21. The dualistic system of local self-government is reflected in legislation. 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

<sup>8</sup> See Election Monitoring and Democracy Studies Centre, Preliminary Report on the Results of the Municipal Elections of 23 December 2019 in the Republic of Azerbaijan <https://smdtaz.org/wp-content/uploads/2019/12/EMDS-241219-eng-1.pdf>

<sup>9</sup> The term "mayor" is sometimes used to indicate the chair of the municipal council, elected among its members. Such term is not appropriate and could be misleading in the case of Azerbaijan. When necessary, it is used in inverted commas to make clear that such institution differs from the common meaning of the term. Paradoxically, while the chair of the municipal council is not referred to as the "mayor" by law, the head of the Baku executive authority is often called the "mayor" even though the capital does not have its own local government.

freely (...). According to 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. Article 1 of the Law on the Status of Municipalities also considers local self-government as being outside the state organisation system, defining it as “a system of organising citizen’s activity”, 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.

22. The Constitution empowers municipalities to enact legal instruments that are binding on citizens and legal entities in their territory. The Constitutional Law on Normative Legal Acts specifies that acts of municipalities are ‘acts of normative nature’ (Article 1.0.3), which are secondary sources (local bylaws) that cannot contradict laws and other normative legal acts (Article 4). Furthermore, some elements of the legal status of municipalities look like features of a real public (self-government) institution. For example, municipalities are elected bodies, their internal organisation and their functions are 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 bylaws which are “binding on citizens living in” their territory (Article 150). The delegation therefore considers that no legal obstacle prevents the formal recognition of municipalities as parts of the state and of its administration, overcoming their marginalisation based on a formal separation of functions that, while declared as providing evidence of municipal autonomy, in fact blocks the development of local self-government in the country.

23. There is no formal hierarchical relationship between the municipalities and the respective local executive bodies. Nonetheless, many experts and stakeholders interviewed by the Congress delegation reported on the informal influence of the executive authorities over municipalities, as an inevitable consequence of the imbalance of powers, influence and resources between weak municipalities and strong local executive authorities. Some interlocutors explicitly mentioned such influence as a positive factor, as it helps municipalities take their concerns to the administrative structure of the state and ultimately to the government, to which they would otherwise have no access.

24. The constitutional and legal framework of local government remains ambiguous and to some extent paradoxical. It establishes municipalities as an expression of civil society and in parallel it creates local units of the executive branch, the local executive authorities, without clearly articulating the limits of their involvement in local affairs. Municipalities and the local executive authorities operate in parallel, being often tasked with similar local responsibilities and, at the same time, being equipped with structural disparity in terms of constitutional status, powers, financial resources, administrative capacity and political weight.

25. 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)<sup>1</sup> 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”;
- The Congress of Local and Regional Authorities, in its Recommendation 326 (2012), regrets, inter alia, “the insufficient and ambiguous definition of local self-government”;
- the Venice Commission and the Directorate of Democratic Governance of the DG of Democracy of the Council of Europe, in their Joint Opinion on the Revised Draft Law making amendments to the Law “On the Status of Municipalities” of the Republic of Azerbaijan, no. 752/2013 (CDL-AD(2014)022, noted that the legal framework, including the proposed amendments, “fails to meet the applicable standards, and relevant constitutional principles, and may have a negative impact on the very existence of certain local elected bodies”.

26. 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. A letter sent in 2013, offering dialogue and assistance on how to possibly address the issues raised in the recommendations, has not been followed up. In the meetings with the delegation, no indications were provided about their possible intentions or processes to consider and implement most of the recommendations made in 2012. During the consultation procedure the government informed the delegation that “relevant instructions were given, and measures were taken to solve problematic issues and to eliminate shortcomings highlighted in the recommendation 326 (2012)”. The delegation notes the adoption of several changes in different pieces of legislation since the last report and was informed that other changes are in progress. Such changes include inter alia the mechanism of allocation of subsidies and subventions from the state budget to local budgets, electronic payments, the ethical conduct for municipal servants, the access to the state register of real estate and are referred to under the relevant articles of the Charter (see below). While commending some of such changes, the delegation notes that they remain quite specific and have not structurally altered the state of the art as pointed out in the mentioned international reports.

### ***Powers and functions of municipalities***

27. The tasks and functions of municipalities are determined by the Constitution, the Law on the Status of Municipalities and some other legal instruments, 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”, on “Public Legal Entities”. 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, and a number of regulations and other normative acts. It should be noted that most of them have not changed significantly in the past few years. During the consultation procedure and as indicated above (paragraph 26), national authorities informed the rapporteurs that an amending Law of 20 June 2014 on budget system improved the mechanism of allocation of subsidies and subventions from the State budget to local budgets. This Law also improved transparency in this respect. A series of acts on supervision, accountability, and transparency were mentioned which, according to the Government, improved the general regulations related to local self-government. Reference was also made about the Law of 9 July 2019 which aimed at establishing a system of exchange of experience with local self-government bodies, their associations with those of other countries.

28. Municipalities may exercise delegated powers of state administration, assuming that the wording of Article 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 European Charter of Local Self-Government. Such delegation of powers from the state administration to municipalities took place only in one case so far: in 2020, based on a resolution of the Cabinet of Ministers,<sup>10</sup> a module type equipment for cleaning dirty water constructed in the shore of the Caspian sea was transferred from the Ministry of Ecology and Natural Resources to 5 municipalities (Buzovna, Binagadi, Bilgah, Pirshagi, Sumgayit). At the same time, corresponding financial resources were allocated from the state budget for 2020.

29. 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” (Article 4.3). Municipalities do not receive any central government grants or contribution to their own local social service programmes.

30. The same can be said for 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. In practice, the delegation was not informed of any of such programmes run by municipalities.

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<sup>10</sup> Resolution of the Cabinet of Ministers of the Republic of Azerbaijan of May 13, 2020, <http://www.e-qanun.az/framework/4594>

31. 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 some interlocutors pointed out that in practice it is not always clear which roads exactly are “local”) and cemeteries.

32. The Law on Status of Municipalities empowers municipalities to undertake 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. However, Article 12 of the Law on Manufacturing and Residential Wastes and Article 6 on the “Guideline of cleaning the residential areas” vest local state executive bodies with the task of 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 absence of 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. 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.

33. In practice, responsibilities of municipalities are even more limited than they are according to legislation, “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”.<sup>11</sup> During the consultation procedure, the government of Azerbaijan expressed its views that this conclusion does not reflect the reality, since the country’s constitution, the Law on the status of municipalities and other sectorial laws provide municipalities with sufficient competences. As regard training and knowledge, the comments provided to the rapporteurs during the consultation process indicate that the Ministry of Justice “is taking consistent and planned measures to improve the quality of work of municipal staffs and to raise their awareness; The academy of Justice and Academy of public administration organise training course every year.” It is also provided that international exchange of know-how is organised through a 2019-2023 State programme for the development of Azerbaijani justice which aims at improving professionalism of staff in the field of local self-government.

34. It should also be noted that some important issues for municipalities are not regulated. 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 (subsidies) to municipalities, provisions on carrying out public consultations. A law regulating reporting by municipalities has not yet been adopted, nor a law on the division between state-owned and municipal-owned land, although the latter is reportedly in the process of being adopted. The government disagrees with this conclusion and stated that the Law on budget systems provides criteria and procedure for allocations from the State budget to municipalities, so do the law on basis for the finances of municipalities and on the status of municipalities which both set deadlines. The rapporteurs were told that the reporting to the Milli Majlis should not be taken as a form of control.

### ***Organisation and decision-making at municipal level***

35. The main rules on the internal organisational structure of municipalities and on their working methods are laid down in the Constitution and in 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. This instrument is certainly helpful against the background of the limited capacity of municipalities, but on the other hand it further limits the margin of autonomy for municipalities. As a matter of fact, it appears that all municipalities have adopted in essence the same or very similar model charters.

36. The legislative and deliberative body of a municipality is the municipal assembly or council, which consists of elected local councillors. 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 most councillors do not belong to any party. Overall, local issues are

<sup>11</sup> 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.

traditionally not a relevant item in the political agenda, as shown by the low turnout in all municipal elections. However, local elections in 2019 witnessed genuine election races in a handful of municipalities, which indicates that local issues are taking root, albeit very slowly. The delegation was also told that younger generations seem to be more engaged in local activities.

37. The council is presided over by the chair, who is elected by the council from among the municipal councillors. The Law on the Status of Municipalities enumerates a number of cases in which the chair can be removed from office. The national authorities explained, in the framework of the consultation procedure that early dismissal shall be carried out in accordance with Art. 19 para 1 and 2 of the law on the status of the municipalities which states that it should be made by open or secret ballot by a majority of more than half of the members of the municipality.

38. 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. 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.

39. Municipalities may establish standing and other committees in order to prepare in advance and review matters within their responsibility, assist the municipal council in implementing its decisions and supervise the activities of municipal enterprises and organisations. 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. Especially in smaller rural municipalities, the lack of well-trained staff capable of preparing and executing the council’s decisions is reported. Interlocutors of the delegation and especially the National Assembly of municipalities ensured that over the last years training is regularly provided to municipal staff and elected people to learn about their function and role (see above paragraph 33 in this respect).

### **Financial resources**

40. The Constitution provides for financial autonomy of municipalities. Municipal councils can impose local taxes and levies, approve local budgets and possess, use and dispose of municipal property (Article 144(I) of the Constitution). The Law on the Status of Municipalities contains detailed rules (Chapter V) 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.

41. In principle, all budget levels are independent. According to Article 3 of the Law on “Budget System”, each level, including municipalities, has the right to determine income and expense in line with existing legislation and budget classification. In practice, however, the taxing and spending autonomy for municipalities does not enable them to autonomously fulfil their functions.

42. Municipalities are overall in an extremely weak financial position. In 2019,<sup>12</sup> the budgetary revenues of municipalities amounted to 34.97 million AZN, out of a state budget of 24.1 billion AZN,<sup>13</sup> which means that municipal revenues are approximately 0.15% of the whole state budget. This is far less than any other country in the region. Since the last monitoring in 2012 the share of own revenues of municipalities has slightly increased, despite the decrease of the land tax revenues after the reform in 2016, according to which taxes on agricultural lands not used for agriculture are paid to the government and not to municipalities. Property tax revenues, instead, have slightly increased in the last decade. In 2015 the total budget revenues of all municipalities in the country were 30.9 million AZN in 2015, with a per capita income of local budgets of 3.3 AZN (less than 2 Euro).

43. As provided by the Law on the “Basis for the Finances of a Municipality”, municipal budget is formed by three different sources: a) tax income (4 taxes, including property tax and land tax, both limited to physical persons, while those paid by legal persons go to the government), b) non-tax income (including parking fees and privatization of municipal land) and c) state transfers, in form of dotation or subvention. Projects implemented by municipalities on behalf of the government or submitted by municipalities to the approval of the government can be funded by the state on top of the ordinary budget, of which they are not part.

44. The Azerbaijani budget system is divided in three levels: the central government budget (state budget), the budget of the Nakhchivan Autonomous Republic and the local (municipal) budget. The central budget

<sup>12</sup> Data for 2020 have been published subsequent to the visit: [https://www.stat.gov.az/source/finance/az/bul/belediyye\\_2020.zip](https://www.stat.gov.az/source/finance/az/bul/belediyye_2020.zip)

<sup>13</sup> <http://www.maliyye.gov.az/scripts/pdfs/web/viewer.html?file=/uploads/static-pages/files/6024d93a7f1106.pdf>

plays a crucial role as the biggest funding source in all state-led economic activities and investment projects in the country. The role of the budgets of NAR and municipalities are insignificant. The state budget comprises both centralized revenues and expenses and local revenues and expenses, which are the incomes raised in the regions from tax and charges and a portion of taxes and payments in the capital. The share of regional and local revenues in the state budget revenues is 1.7% and local and regional expenditures 1.8% of the state budget. Having regard to local revenues only, they amount to approximately 0.15 percent of the consolidated state budget.

45. Furthermore, since local executive authorities are not autonomous bodies but are part of the central government system also with regard to local revenues and spending, the ratio of central government's local and centralised revenues and expenditures is not an indicator of the real level of fiscal decentralisation, which is therefore even more limited in practice than it appears in the budget.

46. Additional transfers from the state budget in form of dotation (unconditional financial aid) and subvention (conditional subventions, i.e. earmarked transfers), have increased: in 2020 such transfers were 5.46 million AZN (4.7 million dotation, 760 thousand subventions) and a further increase is foreseen for 2021 (5.1 million dotation, 1.3 million subvention). This is due to the 2014 amendments to the criteria for both unconditional and conditional financial aid in the Law on Budget System, which now include the number of residents in the municipality, their fiscal capacity, the geographical location of municipalities; the living standards and the socio-economic projects being implemented in the area. Also the Law on the Status of Municipalities was amended in order to allow allocation of additional subventions from the state budget to the municipal budgets for the implementation of projects in the fields of local social protection, environment, as well as economic and social development programmes.

47. In sum, the low level of municipal revenues is insufficient even to fulfil the municipalities' limited tasks and functions. The rapporteurs are of the opinion that the lack of funds prevents municipalities 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, where de facto only local executive authorities operate. Municipalities are heavily dependent on financial transfers from the state, and also are factually subordinated to the local executive authorities, which have much greater capacities in terms of personnel, finance and formal powers. In fact, local executive authorities rely on much stronger financial guarantees, including by the provision that reserves 50% of the collected tax income for the use of local executive authorities: in 2019, the total amount of such income received by executive authorities was 28 million AZN.<sup>14</sup> As confirmed by financial authorities to the delegation, local executive bodies can simply apply to the state budget to cover their expenses should their resources not suffice. The same can in principle be done by municipalities too, but this is not happening due to the political insignificance of municipalities, which rather solicit local executive authorities to intervene with the government, as confirmed by local representatives.

### ***Merger of municipalities and municipal land***

48. The legislation provides for the merger of municipalities, formally based on the voluntary principle. The government has repeatedly introduced changes to provide incentives for amalgamating municipalities, including by simplifying the procedure. In subsequent steps the number of municipalities in Azerbaijan has dropped from initial 2757 to current 1606. The last significant amalgamation took place in 2014, when the overall number has been reduced from 1718 to 1606.

49. The delegation was informed that merger of municipalities is one of the activities the national associations of municipalities are busy with and that it is expected that further amalgamation of the smaller municipalities will take place in the near future, as applications for merging are growing, especially for financial and efficiency reasons. The national associations see it as their duty to raise awareness about the advantages of amalgamation, while respecting the independent decision of each municipality as to whether to apply for merging or not. While the overall number of municipalities in the country is decreasing and is expected to drop further in future, new municipalities will be established in the areas concerned by the trilateral statement of 9-10 November 2020.<sup>15</sup>

<sup>14</sup> <https://economy.gov.az/article/regionlarin-2019-2023-cu-illerde-sosial-iqtisadi-inkishafi-dovlet-proqraminin-icrasinin-birinci-illinin-yekunlarina-hesr-olunan/30687>

<sup>15</sup> the trilateral statement of 9-10 November 2020 was signed by the leaders of Azerbaijan, Armenia and Russia to end the escalation of the Nagorno-Karabakh conflict



50. Municipal 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 as well as 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. However, land maps indicating precise borders of municipalities are not available for all municipalities, which sometimes gives rise to controversy as to the resources produced on a piece of land whose classification is not clear, such as in the case of taxes on advertisements or on agriculture. During the consultation procedure, national authorities highlighted the fact that there is an electronic mapping of municipal property under way and indicated that electronic maps have already been provided to many municipalities.

### **Regional governance**

51. Azerbaijan is a unitary state with limited local government and no regional autonomy, except for the Nakhichevan Autonomous Republic. All regional public authority is exercised by the central level, either directly or by means of the district authorities of the state administration. In such a highly centralised system, the fulfilment of regional tasks and functions suffers from a democratic deficit, since no effective control can be exercised by the citizens over decision-making processes at the levels closest to them.

52. The Nakhichevan Autonomous Republic is a multiethnic exclave that borders Armenia, Iran and Turkey. The status of Autonomous Republic is due to the own peculiar history and to the geographical location. The special status is determined by the Constitution of the Republic of Azerbaijan, by the Constitution of the Nakhichevan Autonomous Republic and by two international treaties (Moscow and Kars, both from 1921 and still in force).

53. The Nakhichevan Autonomous Republic has a parliamentary system of government. The regional parliament is the *Ali Majlis* (Supreme Assembly), a 45-member legislative assembly with a five-year-term. The highest official of the Nakhichevan Autonomous Republic is the Chair of the Ali Majlis, 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 Nakhichevan Autonomous Republic and under the rules set out in the Constitution and in the laws of the Republic of Azerbaijan.

54. According to Articles 138 and 139 of the Constitution, the Ali Majlis of the Nakhichevan Autonomous Republic establishes general procedures concerning: 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. The Cabinet of Ministers of the Nakhichevan Autonomous Republic is the high executive power. It is subordinate to the Ali Majlis and reports to it. In practice, autonomy is limited to the internal organization of the Autonomous Republic. All significant powers are retained by the central government and so are the financial means, for which similar considerations apply as for the municipalities.

55. The territory of the Nakhichevan Autonomous Republic is divided into 7 administrative divisions called districts (*rayons*) (Sharur, Babek, Ordubad, Julfa, Shahbuz, Kangarli and Sadarak) and the city of Nakhichevan, the capital of the Autonomous Republic. The status of these administrative rayons is determined by legal instruments of the Republic of Azerbaijan. The administrative supervision of these rayons is exercised by government bodies of the Nakhichevan Autonomous Republic. The chief executives of the administrative rayons are appointed and dismissed by the President of the Republic of Azerbaijan on the recommendation by the Chairman of the Supreme Majlis of the Nakhichevan Autonomous Republic.

56. The Nakhichevan Autonomous Republic has 5 cities (Nakhichevan, Ordubad, Julfa, Sharur and Shahbuz), 8 settlements and 207 villages.

57. In the absence of administrative regionalisation, 10 economic regions (zones) have been introduced as of 2004<sup>16</sup> with a view to performing economic planning in the territories as part of the State Program on

16 See Presidential Library [https://files.preslib.az/projects/republic/en/azr3\\_6.pdf](https://files.preslib.az/projects/republic/en/azr3_6.pdf)

“Socio-Economic Development of Regions of the Republic of Azerbaijan”. Such regions have nothing to do with decentralization and are simply organizational branches of the central government, with the partial exception of the one coinciding with the Nakhichevan Autonomous Republic, the only subnational tier of government, regulated in Chapter VIII of the Constitution (Articles 134-141). In addition, some state agencies have closed their regional offices and moved their functions to the state regional administration. For example, the Ministry of Education (2016), the Ministry of Culture and Tourism (2016), the Ministry of Labour and Social Protection of the Population (2020) reduced the number of their local units and shifted from district to regional governance.

### ***State supervision***

58. According to the Constitution, “the state shall supervise the activities of municipalities” (Article 146(III)). The main provision regarding governmental supervision of municipal activities is the Law on Administrative Supervision of Activities of Municipalities from 2003, last amended in June 2020. Its aim is to “ensure compliance by municipalities, municipal authorities and their officials with the Constitution and the laws of the Azerbaijan Republic, presidential decrees and resolutions of the Cabinet of Ministers” (Article 1). While the Law on the Status of Municipalities (Article 52) merely states that the “relevant executive body” shall exercise legal supervision over municipalities, without indicating which administrative authority is the “relevant” one, the Decree of the President of the Republic of Azerbaijan no. 162/1999 and subsequent presidential orders clarify that supervision is carried out by the Ministry of Justice through its Centre for Working with Municipalities.

59. The control by the Ministry of Justice is aimed at ensuring overseeing and checking of the legality of the work and actions of municipalities. Municipalities are obliged to forward their decisions no later than 5 working days after the date of their adoption to the Centre for Working with Municipalities for checking. If the Centre finds a municipal decision unlawful, it issues recommendations on re-establishing the rule of law. In principle, municipalities could reapprove their decisions and in such case, they can be taken to court by the Ministry of Justice. According to information provided by the Ministry of Justice, by the national associations of municipalities and by the Constitutional Court, judicial cases of this kind are not frequent. In practice, supervision is reported to take place mostly on financial issues. For example, it is not infrequent that municipalities do not respect the provision which limits to 50% the share of municipal budget that can be spent for salaries.

60. In practice, however, there are additional means for the central government to intervene in the work of municipalities. For example, the Law on Administrative Supervision provides that the supervisory body may consider any request by individuals or legal entities that claim that a municipality has caused damage to their rights or legitimate interests (Article 5.0.2). The government explained that in such cases individual appeals are considered by the supervisory body, which conducts an investigation in form of administrative supervision (Article 8 of the Law) if serious violations of the law are found. If unlawful facts emerge in the conduct of the municipality, the body exercising administrative supervision asks the municipality to change or withdraw the act and in case of non-compliance, it files a complaint in court. In case of a criminal conduct, the supervisory body appeals to the competent state authority to take appropriate measures. The delegation could not receive information on how often this procedure is used in practice and considers that in principle disputes 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 and not to “consideration” by a governmental body.

61. Furthermore, following a referendum in 2009, a constitutional amendment was adopted in 2010, providing that “municipalities shall submit reports to the parliament in cases and in the manner prescribed by law” (Article 146(IV)). Accordingly, in the Law on the Status of Municipalities a new provision was included, 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”.<sup>17</sup> An amendment to the Law on the Status of Municipalities adopted in 2019 expressly limits reporting to delegated powers of municipalities, which means that there is no reporting on own municipal powers. This change has been underlined to the delegation by the national associations of municipalities, which consider it a significant improvement compared to the last monitoring. The government expressed the view that reporting to the Milli

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<sup>17</sup> Opinion 518/2008, Paragraph 38.

Majlis does not mean control but rather covering the work done by municipalities in parliament. However, such a procedure remains questionable from the point of view of both the guarantee of municipal self-government and the role of parliament, as it is not understandable how an elected body (the parliament) can control or 'discuss the work' of other elected bodies (municipal councils).

62. Municipalities are subject to external public financial control, and this control is exercised by the Chamber of Accounts.

63. According to the Law on the Budget system, if a municipality receives a subsidy from the state budget its draft budget has to be submitted to the relevant executive authority (Article 35(2)). No information was provided about this mechanism and the extent to which it is used in practice. The government contends that this is not a form of preventive budgetary control but rather an information which is necessary to determine the amount of funds to be allocated. The delegation considers that this provision indicates a hierarchical relationship between municipalities and the respective local executive authority, at least informally, despite the principle of budgetary autonomy of the levels of government.

### ***Right to associate***

64. In Azerbaijan, three national municipal associations exist, representing the interests of the various types of municipalities (villages, towns and cities). According to the representatives met by the delegation, most of the municipalities do belong to one of the associations, although membership in the respective association is free. The powers of municipalities cannot be transferred to associations and the role of the latter is simply to coordinate municipal activities in order to represent municipal rights and interests more effectively.

65. No information is available on how the associations concretely operate. Interlocutors met by the delegation mentioned that the work done consists in coordination, awareness raising (for example on the advantages of amalgamation) and supporting training activities for civil servants of the municipalities. No legal provision establishes explicitly that associations should be consulted, nor when and how this happens. According to representatives of the associations, they are consulted by parliament when issues of interest for municipalities are at stake, but no specific example could be mentioned. Other interlocutors pointed out that as a matter of fact the associations do not play any significant role in influencing policies at national level and that the members are unknown figures who never appear in the public or political arena.

### ***Consultation and citizens' participation***

66. The Law on the Status of Municipalities provides for some consultation practices involving municipalities. Individual municipalities can be consulted in certain limited areas, such as on projects related to them. Also, the delegation was informed that parliament consults municipalities and their associations, albeit informally, before laws relevant to them are adopted, and that occasionally public hearings take place on draft legislation. Municipalities and their associations can formally submit comments and suggestions to the parliamentary committee on regional relations and once a year the municipal associations are heard by the plenary of the parliament. For example, the delegation was informed that the Instruction on "Assistance in organizing the activities of municipalities and methodological assistance to them" approved by the Plenary Board of the Ministry of Justice on 21 November 2020, No. 20-N, was sent to all three associations before approval, asking to provide opinions, which they did. A consultation procedure with local and regional authorities has been established on financial matters that concern them directly, although no information was available on the practice of such procedure nor on its effects.

67. As to citizens' participation, Azerbaijan has not signed the 2009 Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS 207). Based on information received by the delegation during their remote monitoring meetings which took place in February 2021, they were clearly told that there is at present no real perspective that signature and ratification may happen any time soon. During the consultation procedure however, which occurred six weeks after the monitoring meetings, the national authorities stated that the Ministry of Foreign Affairs was currently considering accessing to international agreements. The rapporteurs note though that the additional Protocol to the Charter was not explicitly mentioned as part of them.

68. The Law on the Status of Municipalities devotes an entire chapter (IV) to the forms of "direct expression of the will of citizens and other forms of local self-government". These are local opinion polls, elections (apparently considered as a form of participation like the others), meetings of citizens, popular initiatives, appeals, and other forms of participation such as neighbourhood committees, associations and charitable

organisations (Article 31). During the consultation procedure the government mentioned one example of neighbourhood committees established in a number of municipalities such as Yasamal and Sabail municipalities in Baku City which “have good prospects for citizens' self-organization”. No interlocutor met by the delegation could however provide examples as to the use and the impact of such instruments.

69. Furthermore, in 2014, a Law on Public Participation has been adopted, which has introduced a number of additional forms in which participation can take place. These include public councils, public discussions, public hearings, studying public opinions, public discussion of draft legal acts, written consultations and possible additional forms not provided for by the law. This law represents a significant improvement compared to the previous situation. However, as results from information provided to the delegation, the potential of this law has not yet been exploited, as initiatives have been limited so far to the participation of municipal representation in some initiatives organised by civil society institutions. The same goes for local referendums that in theory can be initiated by the municipal council or at the request of the population. No example was mentioned to the delegation in this respect.

70. A counter-factual evidence that such commendable normative provisions remain essentially on paper and are not being used in practice comes from the case of Baku, where impressive infrastructural work is being carried out in and around the city, without any consultation taking place. As mentioned in the previous monitoring report by the Congress, this might have to do with the absence of a local public life, which is due to the extremely limited scope of municipalities' responsibilities. 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.<sup>18</sup> According to some interlocutor, however, this situation might change due to the growing interest of younger generations for local issues.

## 2.2 Status of the capital city

71. The Constitution establishes Baku (*Bakı*) as the capital of the Republic of Azerbaijan (Article 22). The Law on Territorial Structure and Administrative Territorial Division (Article 5.9) states that the status of Baku is determined by the relevant law of the Republic of Azerbaijan. However, such law has not been adopted so far and no separate law exists on the status of the capital city.

72. Cities in Azerbaijan may be divided into administrative territorial districts (*rayons*), in which case each unit comprises a separate municipality. Only Baku, the capital, and Ganja, the second largest city, are divided into districts, which are local executive authorities subordinate to the city executive. Baku is divided into 12 administrative districts, (Binagadi (former Kirov), Khazar (former Azizbekov), Khatayi, Garadagh, Narimanov, Nasimi, Nizami, Pirallahy (established last, in 2013), Sabunchi, Sabayil, Surakhany and Yasamal), 5 urban settlements and 53 municipalities. Among the Council of Europe member states, Azerbaijan is the only one with a capital city governed by an unelected managing body (Baku City Executive Authority, BCEA) and not by an elected municipal government. The activities of the BCEA, like for all local executive authorities, are determined by Presidential decree No. 648 on Local Executive Authorities (2012), which further strengthened the position of local executive authorities.

73. The capital city is governed by 12 executive committees, corresponding to administrative districts, and by the BCEA, which provides the overall management of the other district executive committees. The relations between the BCEA and the district executive authorities are bottom-up and based on mutual co-operation. Although there is a local executive authority covering the entire city of Baku, there is no municipality at the city level. The 53 municipalities are all part of the same municipal level of government, which means that there is no hierarchical relation among them and each is only responsible for the socio-economic issues in and management of its own territory. A unified municipality of Baku cannot be established based on current legislation: the Electoral Code provides that the number of members of municipal councils in Azerbaijan is fixed on the basis of the size of the population, and the maximum is 299,999, which is about ten times less than the population of Baku.

74. Despite reiterated proposals by Council of Europe bodies, including both previous Congress monitoring reports on the situation of local and regional democracy in Azerbaijan, to establish a unified and democratically elected municipal government for Baku, no progress has taken place on this issue. Based on information gathered during the visit, there is clearly no perspective for such a step to be taken in the foreseeable future. It must be recalled that an elected municipal government in the capital city is required by European standards and that Article 5.9 of the Law on Territorial Structure and Administrative Territorial Division provides that a law on Baku city must be adopted.

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<sup>18</sup> Explanatory memorandum, Paragraph 129.

75. Not only is the capital city 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 municipalities are in charge of small communal roads. Provision of services is generally in the hands of the BCEA. Furthermore, the massive ongoing infrastructural works in the capital city are carried out by either the central government or the BCEA without significant involvement of either the municipalities and the citizens.

76. The effectiveness of the municipal level of government is further impaired by the absence of land maps of the capital city. This problem, which affects also other municipalities, is particularly acute in Baku, as the unclear boundaries between state-owned and municipal-owned land in practice further reduces the municipal revenues, especially from taxes on advertisements. Interlocutors from the Baku City Executive Authority informed the delegation that the State service on property issues is being resolving the issue, although no time frame has been indicated.

### **2.3 Legal status of the European Charter of Local Self-Government**

77. 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. At the time of ratification, 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".

78. Following the military interventions in the second half of 2020 and the subsequent ceasefire agreement<sup>19</sup> the situation with several previously occupied settlements has changed. During the consultation procedure, the Azerbaijani government informed the delegation that the issue of applying the Charter's provisions in the concerned territories will be on its agenda. Several interlocutors explained that the ordinary system of local government could not be put in place yet in these areas, which are currently managed by special representatives of the state government who in practice are functional equivalent to local executive authorities. The plan is to normalize those areas and to establish elective municipal councils like in the rest of the territory, although no clear plan and timeline exists so far. The delegation takes note of the Decree of the President of the country dated February 4, 2021 titled "Regulation on special representations of the President of the Republic of Azerbaijan". According to the regulation, the special representation of the President of the Republic of Azerbaijan is a structural unit of the Administration of the President performing the duties assigned to him in the territories concerned in this conflict, whereby no room seems to be provided for municipalities.

79. The delegation notes with satisfaction that, after the last report, Azerbaijan ratified Article 10.3 of the Charter in 2013. Governmental authorities mentioned to the delegation that in the meantime cooperation has been established with some 30 municipalities in France, Latvia, Lithuania, Croatia, Bulgaria, Czech Republic, Turkey, Russian Federation, Georgia and other countries. During the visit, no example of cooperation between municipalities and their counterparts in other States has been provided to the delegation. It was noted, however, that such cooperation would in any case require permission by the state authorities. As stated above, 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).

80. According to the Constitution, "international treaties to which the Republic of Azerbaijan is a party shall be an integral part of the legislative system of the Republic of Azerbaijan" (Article 148(II)), and treaties prevail over national legislation in case of conflict (Article 151), except for the Constitution itself and for laws adopted through referendum.

81. The European Charter of Local Self-Government has never been referred by judicial bodies of Azerbaijan in cases involving municipalities. Such cases are, as a matter of fact, quite rare, as the limited role of

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<sup>19</sup> the trilateral statement of 9-10 November 2020 was signed by the leaders of Azerbaijan, Armenia and Russia to end the escalation of the Nagorno-Karabakh conflict

municipalities is overall not perceived as an important matter nor there seems to be a real pressure to enhance it.

## 2.4 Previous Congress reports and recommendations

82. In its previous reports in 2003 and 2012 respectively, the Congress raised a series of concerns regarding the situation of local and regional democracy in Azerbaijan and the limited implementation of the European Charter of Local Self-Government.

83. After the last monitoring in 2012, the Congress pointed in particular to the following shortcomings:

- a. the very limited implementation of the recommendations issued in 2003;
- b. the insufficient and ambiguous definition of local-self-government<sup>20</sup> in the Law on the Status of Municipalities (Articles 2 and 3 of the European Charter of Local Self-Government);
- c. the parallelism in the local self-governance system, which according to the Constitution is carried out by both local executive authorities, which are state bodies, and municipalities which only have a very limited role (Articles 3 and 4 of the Charter);
- d. the subordination, in practice, of municipalities to local executive authorities, which are part of the state administration (Articles 3 and 4 of the Charter);
- e. the imprecise division of competences and responsibilities between municipalities and local executive authorities (Article 4 of the Charter);
- f. 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);
- g. 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);
- h. 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);
- i. municipalities' lack of property and the slowness of property transfers from the state to municipalities, in particular as regards land;
- j. the lack of clarity of the Law on the Status of Municipalities regarding the procedure of supervision of municipalities, and notably the obligation provided by Article 146(IV) of the Constitution, to report to the parliament about their own operations (Article 8 of the Charter);
- k. 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);
- l. 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;
- m. 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.

84. The Congress recommended inter alia to:

- a. review the Law 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 executive authorities, 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;

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<sup>20</sup> See Fn. 6 on terminology.

- 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 municipalities 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.

85. Despite some commendable improvements in a few areas, such as, in particular, in ensuring more transparent mechanisms to hire municipal staff and for the payments to and by municipalities, that are now all done electronically, and some slight improvements in legislation, which however largely remain on paper, the structural and more significant recommendations remain valid also after the new monitoring.

### **3. HONOURING OF OBLIGATIONS AND COMMITMENTS: ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER (ARTICLE BY ARTICLE)**

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

##### **Article 2**

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

86. Local self-government is recognised in the Constitution (Section IV, Chapter IX), although not as part of the state power (which is regulated in Section III) nor part of the public administration. While acknowledging the position of the government which considers municipalities as part of the state power and as institutions of the public administration, the rapporteurs note that neither the Constitution nor the corresponding legislation, beginning with the Law on the Status of Municipalities, include the main features of the Charter's definition of local self-government, since they do not establish the right of local authorities to regulate and manage local public affairs nor the concept of the interest of the local population.

87. 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. Against this background, the independence of municipalities means the possibility to decide autonomously on a substantial share of local issues, not, like in the context of Azerbaijan, their exclusion from the state structure and from the public administration without being provided with any significant power.<sup>21</sup> To fulfil the obligations stemming from Article 2 of the Charter, Azerbaijan should therefore unambiguously recognise municipalities as state institutions exercising public power and as part of the overall public administration.

<sup>21</sup> See also the Venice Commission's Opinion on the Draft Amendments to the Constitution of the Republic of Azerbaijan (CDL-AD(2009)010) as well as the Joint Opinion on the Revised Draft Law making amendments to the Law "On the Status of Municipalities" of the Republic of Azerbaijan, no. 752/2013 (CDL-AD(2014)022 by the Venice Commission and the Directorate of Democratic Governance of the DG of Democracy of the Council of Europe.

88. The Charter does not contain any specific obligation as far as to regional self-government and the organization of public administration are concerned. In Azerbaijan only one regional tier of government exists, the Nakhichevan Autonomous Republic, regulated in Chapter VIII of the Constitution, as part of the state power. The state administration includes also administrative districts, that are territorial offices of the central administration. Furthermore, 10 economic regions (zones) have been in place for 15 years, which however are mere branches of the central government implementing economic planning at territorial level. Given the strong centralization of the state structure and the asymmetric structure affecting the Nakhchivan Autonomous Republic, a moderate decentralization by introducing elected regional governments as provided for in the Framework on Regional Democracy could be considered in order to enhance tailor-made solutions and policies in the diverse regions of the country.

89. The organization of the local government in the capital city represents a unique case among the Council of Europe's member states. Baku is the only capital city without an elected city government accountable to the local population. According to the Charter, the role of central government authorities should be limited to the regulation and (proportionate) administrative supervision of (the capital city's) municipal government, while in the case of Baku the central government manages the city directly through the Baku City Executive Authority. Furthermore, article 5.9 of the Law on Territorial Structure and Administrative Territorial Division assumes the adoption of a law on Baku city, but this has not been the case so far.

90. The Congress delegation was informed that the issue of possibly setting up an elective city council and mayoral institution in Baku is not on the political agenda. The main reason is reportedly the strategic importance of the city for the national government and its development strategy: infrastructural and beautification works would allegedly be slowed down if decisions are not taken and implemented centrally.

91. 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 and recall 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.

92. While the principle of local self-government is formally recognised in legislation, including in the constitution, its very concept and its design do not correspond to those laid down in the Charter. In order to assess compliance with Article 2, the formal recognition of the principle in domestic legislation is not sufficient. Rather, the core elements of the principle as defined by the Charter have to be enshrined in legislation. According to the Contemporary Commentary on the explanatory report to the European Charter of Local Self-Government<sup>22</sup> (Paragraph 22) these core elements, as stated in the preamble of the Charter, are: a) "local authorities endowed with democratically constituted decision-making bodies"; b) "a wide degree of autonomy with regard to their responsibilities"; c) "ways and means by which those responsibilities are exercised and the resources required for their fulfilment". These elements are not safeguarded in the pertinent legislation.

93. For these reasons, the rapporteurs conclude that Article 2 of the Charter is not respected in Azerbaijan.

### 3.2 Article 3 – Concept of local self-government

#### Article 3

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
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.

#### 3.2.1 Article 3.1

94. The Azerbaijani legal framework on local self-government points to the autonomy of the municipal level, to the extent that it even places it outside the administrative structure of the country. It also lays down a series of public functions that municipalities are entitled to manage, albeit subsidiarily. However, autonomy of municipalities, often framed even in terms of "independence" does not mean that they are in a position to

<sup>22</sup> Contemporary Commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, adopted by the Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (Monitoring Committee) on 7 December 2020 (CG-FORUM(2020)02-05final).



“regulate and manage a substantial share of public affairs under their own responsibility and in the interest of the local population”, as required by Article 3.1 of the Charter. In practice, in the context of Azerbaijan, autonomy of municipalities means that they are completely irrelevant in determining any aspect of local life, as all power and resources are vested and exercised by the local executive authorities. Even if they were fully exercised in practice, the range of responsibilities of municipalities laid down in the Constitution and statutes is too narrow to correspond to the requirement of Article 3.1 of the Charter.

95. Although the Charter does not specify what local public affairs must be regulated and managed by municipalities, 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. The explanatory report to Article 3.1 of the Charter states that “the intention of the Charter is that local authorities should have a broad range of responsibilities which are capable of being carried out at local level”. This is not the case in Azerbaijan, as 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.

96. Such division of powers and duties raises serious and even broader concerns about the democratic deficit that the organization of local government reveals, as all significant local powers are exercised by non-elected peripheral offices of the government while democratically accountable elected bodies (municipal councils), have extremely limited functions and weight and “fail to account for any substantial share of public affairs”, as noted by the Congress in its first Recommendations 126 (2003). The overall situation has not significantly changed since then.

97. More specifically, as local self-government is not defined by the Constitution which merely refers to it as being “carried out by municipalities”, which are elected bodies (Article 142(I) and (II)), the constitutional regulation does not include the main components of the Charter’s definition of local self-government. Neither the Constitution nor the Law on the Status of Municipalities provide for the right of municipalities to regulate and manage local public affairs nor for the concept of the interest of the local population.

98. In fact, the Constitution and the following legislation, in particular the Law on the Status of Municipalities, are ambiguous in referring to local self-government: on one hand, they provide a list of powers attributed to municipalities, also in some potentially significant areas such as social services, education and economic development but on the other hand the activity of municipalities is restricted to what is not already covered by the state administration and in any case municipalities cannot interfere with the implementation of programmes of state bodies in the same areas (local social protection and social development programmes, local economic development programmes, Articles 4.3 and 5.2 of the Law on the Status of Municipalities). During the consultation procedure, the national authorities explained in this regard that municipalities are also identified as “executors of most of the State programme and national action plans adopted over the past years”.

99. Following this ambiguity, local executive power is exercised by the heads of local executive bodies, as provided for by the Constitution (Article 124) and the subsequent legislation. The scope of responsibility of these bodies is determined by the President of Azerbaijan, who also appoints the heads of these bodies. This is singular not only in terms of splitting local functions between the state administration and locally elected bodies, but also with regard to the division of law-making powers 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.

100. Due to the formal separation of tasks and institutions, there is no formal hierarchical relationship between the municipalities and the respective local executive authorities, even though administrative boundaries frequently overlap. Nonetheless, many experts and stakeholders interviewed by the Congress delegation reported on the informal influence of the executive authorities over municipalities. 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, despite the fact that there is no legal basis for this.

101. The functions of local governments are typically not full and exclusive since municipalities and local executive authorities carry out many parallel functions. In such a situation, if both local governments and local bodies of the state administration have tasks in a specific area, it is obvious that the level with more means, resources and political power prevails.

102. 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.

103. The municipal level can be brought to a degree of autonomy corresponding to the requirement of Article 3.1 of the Charter only if the Law on the Status of Municipalities and the other laws transferring tasks and functions to municipalities are amended by ensuring 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.

104. The delegation refers to the Contemporary commentary<sup>23</sup> affirms that “the Charter is an international treaty of regional scope that is binding like any other treaty. Consequently, the ratifying countries are required to implement it in accordance with the “pacta sunt servanda” principle, a long-standing principle of international law, and in the manner laid down by the UN Vienna Convention on the Law of Treaties (1968)”.

105. For these reasons, the rapporteurs conclude that Article 3.1 of the Charter is not respected in Azerbaijan.

### 3.2.2 Article 3.2

106. Local self-government is exercised by two different and separate institutions, the local executive bodies that are part of the state administration and municipalities as elected organs that are not part of the administrative structure of the country.

107. Having regard to the municipal level only, the requirements of Article 3.2 are formally respected as municipalities consist of members elected by secret ballot in direct, equal and universal suffrage. Municipal councils elect a chairperson responsible to them and the legislation, including in particular the Law on Public Participation, provides for opportunities to resort to referendums and other forms of citizens' involvement in local issues (see above).

108. As to the “responsibility” of the chairpersons to the councils, no information could be obtained by the delegation on the means of supervision of the chairperson by the council, such as the number of oral and written questions put to them, or whether the municipal charters provide for some reserved sitting time for discussing proposals (even less of proposal by the opposition, which generally does not exist in most municipalities).

109. Article 146 of the Constitution, as amended in 2016, provides that the municipalities and municipal servants bear civil responsibility for the damage caused to human rights and liberties, as well as the guarantees thereto, in the result of the activity or inactivity, which contradicts the legislation, committed by municipal servants. The Constitutional Court reported that this provision has been used a few times to suspend municipal councillors, notably in property cases regarding the distribution and selling of land plots that resulted in property violations of the citizens. In any case the responsibility cannot go as far as to lose an elective mandate and members of municipal councils cannot be removed.

110. As the Contemporary commentary clearly points out (Paragraph 37), the two paragraphs of Article 3 of the Charter are closely related and “local self-government” is shaped in terms of “local democracy”. This means that the shortcomings highlighted with regard to Article 3.1 cast their shadow on Article 3.2 as well.

111. In light of this close link, the requirements of Article 3.2 of the Charter are only partly met in Azerbaijan.

### 3.3 Article 4 – Scope of local self-government

#### Article 4

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
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 who are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
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.

<sup>23</sup> <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>

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.

### 3.3.1 Article 4.1

112. As mentioned, a basic list of tasks and responsibilities of municipalities is laid down in the Constitution and in the legislation, which have set up a two-tiered system. The local executive authority is an extension of the executive power of the state. The legal status of local state administration in Azerbaijan is regulated mainly by the Law on Local Executive Authority and by the President's Regulation from 2012, which has further strengthened the already dominant position of local executive authorities in local affairs.

113. According to Article 124 of the Constitution and of the Law on Local Executive Authority, the head of these authorities perform the following functions: carry out orders of the President of Azerbaijan; implement state programmes authorized by the President of Azerbaijan as well as local programmes; establish and dissolve local state administration departments, services, enterprises and organizations; appoint and dismiss their heads; annul any documents that run counter to existing legislation; organize elections, national referenda and public discussions as established by legislation; submit issues and proposals concerning local development to the appropriate executive bodies; execute other duties as established by the legislation.

114. Chapter 9 of the Constitution (Articles 142-146) lays down the main principles of local self-government, such as the legal status of municipalities, their basic powers and their relationships with other entities. The functions assigned to municipalities are the following: recognition of mandate of municipality members, loss of their mandate and termination of their mandate according to legislation; approval of in-house regulations of municipality; election of the chairman of municipality, his/her deputies, permanent and other commissions; establishment of local taxes and duties; approval of local budget and reports on its implementation; use and disposal of municipal property; acceptance and implementation of local programmes of social protection and social development; acceptance and implementation of local programmes of economic development; acceptance and implementation of local ecological programmes. Additional powers can be transferred to municipalities by the state administration, allocating appropriate financial resources to exercise them. In such case, the implementation of such functions is subject to control by the local or central executive authority.

115. In practice, as pointed out by the Committee of the Regions of the European Union the responsibilities carried out by municipalities are only the following:

- maintenance of cemeteries;
- local road maintenance (shared with local executive authorities);
- renovating activities and gentrification (shared with local executive authorities)
- parking;
- allocation of land plots for individual house building (shared with local executive authorities)
- parks and vegetation (shared with local executive authorities).<sup>24</sup>
- Keeping record of family farms.

116. The Law on the Status of Municipalities pays attention to the adoption and execution of municipal programmes concerning social protection, social and economic development and the local environment. At the same time, almost all socio-economic functions fall within the scope of the local executive authorities, as mentioned above (Article 3). On some issues, local executive authorities are required to take into consideration the views and suggestions of municipalities, although it is not clear how this happens nor there seems to be a formal procedure to do so. The role of municipalities is limited in practice also because funding from state budget directly goes to the local executive authorities, and this branch of power rather than municipalities is responsible for submitting proposals to the state.

117. While the Constitution (art. 144) and the legislation formally lay down some – albeit limited – powers reserved to municipalities, the problem remains of ill-defined roles, responsibilities and competences of the local executive authorities and municipalities. The current framework leaves municipalities little discretion over a significant portion of the responsibilities granted to them by the Law on the Status of Municipalities. The division of powers and duties between the local executive authorities and the municipalities is so disproportionate and uneven that the latter are not in a position to carry out most of the functions they could

<sup>24</sup> <https://portal.cor.europa.eu/divisionpowers/Pages/Azerbaijan.aspx>

perform according to legislation. A quicker and more effective transfer of functions would be possible if the local and executive authorities were democratically elected by the citizens.

118. It must be reminded that, Article 4.1 of the Charter “requires clarity and legal certainty for the regulation of the “basic powers and responsibilities” of local government bodies”(see the contemporary commentary in this respect) which is missing in the case of Azerbaijan, despite being provided for in legislation, as the provisions remain largely unimplemented.

119. For these reasons, the commitments under Article 4.1 of the Charter are to be considered as only partly respected in Azerbaijan.

### **3.3.2 Article 4.2**

120. As the explanatory report to the Charter suggests, Article 4.2 entails an understanding of local government according to which “local authorities”<sup>25</sup> are “political entities acting in their own right to promote the general welfare of their inhabitants” and therefore “they have the right to exercise their initiative in these matters”. This means that in principle municipalities should have “the right to exercise their initiative on matters not explicitly excluded from their competence by law”, as further explained by the Contemporary Commentary (Paragraph 57).

121. This is not the situation in Azerbaijan, where there is nothing like a clause of general competence for municipalities. Their competences are listed in legislation and, as described above, severely limited in practice, to an extent that de facto no single function of municipalities is exclusive. Furthermore, from a legal point of view, it must be noted that since the local executive authorities are responsible for the implementation of decisions and policies of the central government and the President of the country has the power to define the competences of local executive authorities, the limits of municipal powers laid down in legislation might be influenced in practice by executive power.

122. This makes the current legal and factual situation not compatible with the obligation set by Article 4.2 of the Charter.

### **3.3.3 Article 4.3**

123. Azerbaijan has not ratified Article 4(3) of the Charter.<sup>26</sup>

### **3.3.4 Article 4.4**

124. As described above, the powers of municipalities are limited and by no means exclusive, as they are both legally and de facto undermined by especially the local executive bodies and overall by the current structure of powers as far as the local issues are concerned. The laws and the Regulation on Local Executive Bodies concentrate all important powers with regard to the implementation of state power at local level and locally relevant public services in the hands of local representatives of central governments and heads of executive bodies, which is contradictory to the text and spirit of Article 4 of the Charter overall and of Article 4.4 in particular. As the Contemporary Commentary puts it, limitations on the powers of municipalities must be provided by law, “be exceptional, based on objective reasons and interpreted narrowly” (Paragraph 67).

125. The Law on the Status of Municipalities makes clear that the powers of municipalities are by nature not “full and exclusive”: Article 4.2 states that the services provided by the municipalities are only supplementary and local social, economic and environment programmes may be aimed only at resolving issues not covered by the relevant state programmes. Therefore, the majority of local public services fall under the competence of both state and municipal structures,<sup>27</sup> whereby the strongest level inevitably prevails. As recalled above (Article 3) the law also prevents municipalities from interfering with programmes carried out by the local executive authorities in key areas such as local social protection and local social and economic

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25 In this case municipalities, see above Fn 6 on terminology.

26 [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/122/declarations?p\\_auth=gf3gG2lt](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/122/declarations?p_auth=gf3gG2lt)

27 See the table elaborated by M. Mamedova, H. Hafiz Bashir, B. Abil Nazir and H. Mirali Asad, *Local Government in Azerbaijan*, in: *Local Government in Eastern Europe, in the Caucasus and Central Asia*, Local Government and Public Service Initiative, Budapest 2002, p. 401, which exemplifies that competences of municipalities are always shared with the state (electricity, gas, town planning, local development, tourism), the local executive committees (sewage, heating, waste, street cleaning, administrative matters) or both (water supply, environmental protection, consumer protection). The list is still overall valid despite some changes and improvements (e.g. rural cemeteries). See also the list elaborated by the Committee of the Regions of the EU: <https://portal.cor.europa.eu/divisionpowers/Pages/Azerbaijan.aspx>.

programmes. This way, municipalities are discouraged from introducing policies in many of the areas where they could have a role, because the central government already carries out a wide range of programmes in those categories through the local executive authorities and line ministries. For example, it is practically impossible for municipalities to participate in the maintenance or management of public schools, because the Ministry of Education is responsible for both tasks.

126. Article 4.4 of the Charter also discourages overlapping responsibilities, as in turn they can become a threat to the weakest level of government, which in the case of Azerbaijan is no doubt the municipality. "Higher-level authorities usually have more and better financial, organisational and human resources than local authorities" (Contemporary Commentary, Paragraph 67) and while in the context of Azerbaijan it is not legally appropriate to consider local executive authorities as "higher level authorities" as compared to municipalities due to the formal separation between the two, they do have "more and better financial, organizational and human resources" and "take control take control of the most attractive governmental responsibilities" (Paragraph 67), and "greater or even exclusive regulatory powers in various areas" (Paragraph 67), creating a de facto incompatibility with Article 4.4 of the Charter.

127. The current legal framework in Azerbaijan does not establish full and exclusive powers for municipalities nor does it provide for a clear definition of the responsibilities of the various actors and favours local executive authorities over municipalities in taking care of the local services.

128. In light of the above, the rapporteurs consider that Article 4.4 of the Charter is not respected in Azerbaijan.

### **3.3.5 Article 4.5**

129. Delegation of functions to municipalities has traditionally not been used in Azerbaijan. The possibility is provided for in the very Constitution (Article 144(II)), and in such case also the financing necessary to perform the task has to be transferred.

130. As mentioned above, the first and so far only case in which such delegation took place was in 2020, when the Cabinet of Ministers transferred from the Ministry of Ecology and Natural Resources to five municipalities a module type equipment for cleaning dirty water constructed in the shore of the Caspian. The delegation of functions was accompanied by the transfer of the financial resources necessary to manage them.

131. The rapporteurs were not able to collect first-hand information on how this delegation is working and is being implemented, and in particular it is not clear the extent of discretion that municipalities are given "in adapting their exercise to local conditions" as required by Article 4.5 of the Charter. In any case, no interlocutor pointed to any particular problem arising in this regard and all confirmed that the respective financial resources have been allocated in the State budget 2020.

132. The rapporteurs consider such first precedent an encouraging example of trust towards the municipalities and a demonstration of the fact that they can indeed be entrusted with tasks, including complex ones. They express the hope that this reportedly positive experience can be replicated more often and can open up new avenues for the balanced development of local self-government in the country.

133. As the possibility to delegate functions to municipalities is not only contained in legislation but is eventually also being implemented in practice, the conditions set out in Article 4.5 of the Charter can be considered to be met in Azerbaijan.

### **3.3.6 Article 4.6**

134. According to the national associations of municipalities and to the representatives of the Parliament met by the Congress' delegation, municipalities are quite regularly consulted, especially but not exclusively through their associations, on central government plans or decisions that primarily affect the interests of municipalities. Representatives of the Parliament also affirmed that consultation procedures are normally activated on any draft legislation relevant to municipalities or to their association and that municipalities or their associations can also submit proposals for legislation. By way of example of the alleged good practice to consult national associations as well as individual municipalities when bills are discussed that are of municipal concern, representatives of the parliamentary committee on regional relations mentioned that the transfer of responsibility on cemeteries to municipalities took place following intense consultations. Legislation, however, remains silent on conditions and procedures of consultation, except in financial matters that directly concern municipalities (see below, Article 9). Reportedly, also a network of informal

consultations is in place which makes it possible to bring municipal issues to the attention of state authorities at both central and regional level.

135. Very few examples of consultations – especially the formal ones – have been provided to the delegation despite several questions. The government pointed to the Ministry of Justice’s Instruction on “Assistance in organizing the activities of municipalities and methodological assistance to them” as an example of consultation with the national associations. The national associations of municipalities pointed out to the delegation that consultation with municipalities is improving and that (unspecified) draft laws are currently in the pipeline in the work of Parliament. According to the national associations the provision of subsidies and subventions to municipalities in the draft budget of the Republic of Azerbaijan are also discussed with municipalities and their national associations in the Milli Majlis, Ministry of Justice and other central executive bodies and inquiries are made to find out their opinion on specific issues. The Mayor of Saray told the delegation that he knows how to raise issues of concern and therefore he is not missing a formalised procedure for consultation.

136. This shows that while consultation is possible and takes place informally, it is not an established practice, nor is it perceived as an important element for the functioning of local self-government to the extent that deserves to be enshrined in legislation.

137. It must be reminded that consultation is a key principle of the Charter and municipalities should be consulted by state bodies in the discussion and approval of laws, regulations, plans and programmes affecting the legal and operational framework of local democracy, as reminded by the Contemporary Commentary (Paragraph 79). In order to raise awareness of the key importance of consultation as a procedural backbone for the functioning of (local) democracy, the Congress has adopted several recommendations and resolutions on the right of municipalities to be consulted. It has reminded that the right of local authorities (municipalities) to be consulted is “a fundamental principle of European legal and democratic practice”, as it contributes to good governance (Recommendation 171 (2005))<sup>28</sup> and that local authorities (municipalities) should have an active role in adopting the decisions on all matters that concern them and in a manner and timing such that they have a real opportunity to formulate and articulate their own views and proposals, in order to exercise influence (Recommendation 328 (2012)).<sup>29</sup> Therefore, consultation cannot be exercised only in practice and outside transparent procedural frameworks.

138. Next to the procedures to consult municipalities as such, prior to making decisions that might affect them, the Azerbaijani legislation provides for instruments that allow to consult citizens, including by means of referenda. The Law on Local Referenda defines the issues that may be decided by local referendum and establishes procedures for organizing referenda, publishing the results and enacting them into law.

139. Municipalities may hold a referendum on any issue within their competence at their own initiative or at the request of at least ten percent of eligible voters in the respective territory. Referenda are financed from local budgets. When a referendum is to be held, the municipality issues a resolution announcing the date of the referendum, the issue at stake and the order of financing. This resolution must be publicized in the local mass media within three days.

140. The Law on the Status of Municipalities provides for a number of instruments for direct participation of citizens, such as opinion polls, meetings of citizens (in municipalities with less than 500 inhabitants), popular initiatives, petitions by citizens and other forms, including neighbourhood committees, associations, and charitable organizations (Articles 26-30). It is curious that among the instruments for citizens participation also elections are mentioned (Article 27) and that some interlocutors, asked about participation, mentioned that citizens can listen to the meetings of the municipal councils, can call members of municipality on the phone and that mayors make themselves available for the press.

141. The Congress delegation could not get informed about the practical use of such instruments. The representatives of the national associations of municipalities explicitly stated that, overall, the level of citizen participation in local governance processes, including decision-making on local issues, is not high in the country. The practice to resort to participatory instruments is in any case extremely limited and they do not form part of the ordinary life of municipalities.

142. Due to the significant difference between the legal framework and the practice as far as consultation is concerned, the requirements of Article 4.2 of the Charter are met only in part in Azerbaijan.

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28 Debated and approved by the Chamber of Local Authorities on 1 June 2005 and adopted by the Standing Committee of the Congress on 2 June 2005 (see Document CPL(12)5).

29 Debated and adopted on 18 October 2012 by the Congress (see Document CG(23)II, explanatory memorandum).

### 3.4 Article 5 – Protection of local authority boundaries

#### Article 5

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.

143. Municipal boundaries are determined by the Law on Municipal Territories and Lands, together with the list of all municipalities in Azerbaijan and their territories. According to this law, the State Land Committee and the local executive authorities draw up documents for urban planning and construction which clearly indicate municipal territories and land to be transferred to municipalities. Other laws also regulate issues of municipal property, such as the Law on Land Reform, whose article 7 is wholly devoted to the issue of municipal lands, the Law on the Management of Municipal Lands; the Law on Municipal Taxes; and the Law on the Merging of Municipalities. Also, the Model Municipal Charter specifies that territorial boundaries must be incorporated into all municipal charters.

144. 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.

145. Municipal boundaries are 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.

146. The delegation has been informed of the recent partial changes in the administrative areas of the Sharur and Sadarak provinces of the Nakhchivan Autonomous Republic. The Milli Majlis passed the respective law, which transfers the Demirchi village of the rural administrative district by the same name from its current Sharur Administrative Province to the Province of Sadarak.

147. Since the establishment of municipalities, their number (initially 2757) has been progressively reduced by means of successive amalgamation processes. The last wave of mergers took place in 2014 and reduced the number from 1718 to the current 1606. Mergers took place among the village municipalities and did not affect larger cities. According to information provided to the delegation, it is likely that further amalgamations might happen in the near future, as smaller municipalities often face problems in carrying out their functions due to especially financial and capacity reasons.

148. Merger of municipalities is an entirely voluntary procedure, which cannot be imposed onto municipalities. The government has however twice introduced changes to the legislation on "Joint activities and the merger, separation and abolition of municipalities" and has simplified the procedure in order to encourage voluntary mergers. Furthermore, the national associations of municipalities often provide information on the potential benefits of amalgamation.

149. As a consequence of the military intervention, in late 2020, in parts of the territory that were previously outside of governmental control, a transitional regime was adopted for those areas, which established a direct control by the government. Municipalities will be (re)formed in those territories too, which will lead to the increase of the total number of municipalities in the country by 915, according to first information received by the delegation. No information has been provided as to the procedures and the exact timing of this transition. The rapporteurs wish to recall that this process should be guided by the Charter and its principles and should therefore allow for a sufficient degree of involvement of the citizens and the municipalities concerned.

150. While the legislative framework is overall in line with the requirements of Article 5 of the Charter, consultation is not sufficiently guaranteed in practice nor a sufficient degree of involvement of the population by means of referenda and other participatory instruments is taking place. Awareness should be raised not only about the benefits of mergers of municipalities, but also about the requirements to achieve them in a democratic, inclusive and participatory environment.

151. For these reasons, the rapporteurs consider that the situation in Azerbaijan is compatible only in part with the requirements of Article 5 of the Charter.

### 3.5 Article 6 – Appropriate administrative structures and resources

#### Article 6

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
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.

#### 3.5.1 Article 6.1

152. Article 6.1 of the Charter requires that the right conditions be provided for the office of local elected representatives in order to ensure free exercise of their functions. The Law on Municipal Service outlines the structure of the executive apparatus and the organization of municipal service and regulates the activities of municipal employees, their rights, duties, labour conditions and social benefits. Accordingly, municipalities have the right to determine their internal administrative structures and this organisational autonomy can be restricted only by law, in order to ensure the democratic operation of municipalities.

153. As to the structure, municipalities have a municipal assembly or council, consisting of elected councillors. The size varies from 5 (in municipalities with 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 is a low level of representation of political parties at local level and the vast majority of councillors are independent and do not belong to any party. In general, political parties have no local agendas and only recently the establishment of an opposition party (Real) has brought the issue to the fore, although predominantly in the bigger centres. There is instead a positive trend as far as representation of women and youth is concerned: in the 2019 municipal elections, 5,847 women have been elected, who make up 38.8% of the councillors, with an increase of 11% compared to the municipal elections in 2014. About 35% of municipalities are led by women. The 2019 municipal elections also witnessed the election of 6,012 young persons (39.9%), which increased their presence in municipalities by 10.3% compared to 2014 municipal elections.

154. Members of municipalities (councillors) can be dismissed only in specific cases provided for by law. According to article 22 of the Law on the Status of Municipalities these are: violation of the electoral procedures; resignation; failure to fulfil the legal requirements for the position; appointment to a position in a legislative, executive or judicial body; medical declaration of unfitness to fulfil official duties for more than four months; non-attendance of meetings, without due cause, for a period of time stipulated in the municipal charter.<sup>30</sup>

155. During the term of office, a member of the municipality (councillor) may not be dismissed on the initiative of the administration or transferred to a low-paid job as a disciplinary sanction at the place where he/she works under an employment contract without prior consent of the municipality and its head (Article 11 of the Law on the Status of a Member of the Municipality). The procedure for dismissal is regulated by Article 22 of the same law. Reference to the possibility to do so with consent of the head of the municipality raises concerns as to the effectiveness of the guarantee the provision is aimed to ensure. Information provided after the visit confirms that this sometimes occurs in practice, such as in the case of Sabail municipality and Binagadi settlement municipality. The information does not specify, however, neither the number of dismissals nor their frequency.

156. The council is presided over by the chair (sometimes referred to as “mayor”), who is elected by the council from among the municipal councillors. Municipal councillors cannot be removed from office and amendments to the Law on the Status of Municipalities adopted in 2014 specify the cases in which their powers can be suspended, as well as when a municipality can be early dismissed. This requires a decision by the Central Election Commission on an appeal submitted by the Milli Majlis of the Republic of Azerbaijan (Articles 22-1 and 22-2 of the Law on the Status of Municipalities).

157. 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

<sup>30</sup> See the critical comments put forward in the Joint Opinion of the Venice Commission and the Directorate of Democratic Governance on the revised draft law making amendments to the Law “on the Status of Municipalities” CDL-AD(2014)022 paras. 24-27.



responsibility of the municipal council, such as important organisational and personnel matters or the imposition of local taxes and levies. 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.

158. All municipalities have drafted their charters following the template included in the Model Municipal Charter, as provided by the respective law. This has no doubt helped municipalities to establish their organizational document, considering the low capacity of especially small and rural municipalities. At the same time, the consequence of the support found in the model charter is that all municipal charters look quite the same and municipalities have in practice little opportunities to adapt their internal administrative structure to local needs. The room for discretion that legislation must leave to municipalities in order for them to choose and set up their own organisational structure is therefore very limited in practice. Legally, it has to be reminded that the municipal charters are registered by the relevant local executive authority (Article 8.3 of the Law on the Status of Municipalities).

159. No structural public administration reforms have taken place since Azerbaijan has gained its independence. However, over the last years, single measures have been taken by the Ministry of Justice to bring the work of local self-government bodies in line with new requirements, especially by expanding the use of the internet in the administrative life of municipalities and by introducing electronic forms of payment. As of 2015 it is prohibited to accept local taxes and fees by cash at municipal offices and local taxes and fees can be paid in banks or in local post offices only. The municipalities currently equipped with computers and connected to the internet are 2/3 of the total and measures are being taken to include all municipalities in this process, which is a short-term goal of the government. Another important practical step has been the implementation of the Automated Municipality Information System (AMIS) Programme, which, inter alia, connects municipalities to the Government Payments Portal of the Central Bank which facilitates electronic payments and helps a more transparent transfer of money. Measures have also been taken to combat corruption and to increase professionalism in the public service.

160. Municipalities have the power to establish independent bodies such as local companies or agencies to improve the delivery of local services. The Law on the Status of Municipalities provides that municipalities may establish independent legal entities to engage in economic activities and other activities not prohibited by law and have the power to determine the purposes, conditions and rules of activity of such legal entities, regulate the prices and tariffs of their products (services), approve their charters, appoint and dismiss their heads, and listen to their activity reports (Articles 34 and 35). The delegation has been informed by National Authorities during the consultation procedure that over the last couple of years this possibility is being used increasingly by municipalities, which have established new enterprises in various fields of activity.

161. In 2015, a Law on Public Legal Entities was adopted (and subsequently specified by a Decree of the President of the Republic of Azerbaijan) providing that such entities are non-state or non-municipal organizations established on behalf of the state and municipality or by a public legal entity with the purpose to engage in activities of national and public significance, such as commercial activities. Unlike government agencies, the public legal entities are granted the right to participate in entrepreneurial activities. They are not funded by the state budget, but rather through the self-funding principle. While the transfer of certain responsibilities of the state to the public legal entities could represent a possible step towards more decentralization, it does not seem that municipalities have made use of this possibility so far.

162. The rapporteurs consider that in Azerbaijan the conditions set out in Article 6.1 of the Charter are partly met and encourage authorities to redouble their efforts to allow a real degree of organizational and also political differentiation among municipalities and to support them in creating proper working conditions for the benefit of the local communities.

### **3.5.2 Article 6.2**

163. Staff can work for municipalities on two different contractual bases: tenured civil servants and officials working on an employment contract. The law provides for the incompatibility between the position of municipal officer and that of member of legislative, executive or judicial bodies. Salaries are determined in accordance with the organizational chart approved by each municipality. Other working conditions, such as hours, vacation, retirement benefits and social security, are regulated by the appropriate labour legislation. Individual municipal governments may assign additional payment to municipal employees according to their financial capabilities. The head of the appropriate municipal division is responsible for the employment and dismissal of municipal personnel.

164. In 2015 the Law on Municipal Services has been amended introducing new rules on the selection of personnel. Municipal staff is now hired based on an evaluation by a commission consisting of five persons after a selective process (competition). It is also provided that relatives of the head of the municipality and his/her deputies cannot be hired by the municipality.

165. Municipal officials can be dismissed only in cases explicitly detailed in law. According to article 21 of the Law on the Status of Municipalities, these are: conviction by a court; health reasons; if a court has judged a staff member not to be responsible for his or her actions; termination of citizenship, or if the person becomes a citizen of a foreign state or makes a similar commitment to a foreign government; death.

166. In 2016, Article 146(l) of the Constitution has been amended and the civil liability for municipal staff has been established if they cause damage to the rights of citizens. No information was provided on the amount of such cases. The authorities informed the delegation that litigation regarding municipalities affects in most cases property disputes and that in this area it is not infrequent that citizens sue the municipality on damages caused to their (property) rights. It must be recalled that one of the main reason for complaints regarding local issues is the still incomplete legislation on separation between state and municipal land and it would be unfair to hold municipal staff liable for damages caused by the inactivity of the legislator rather than by their blameworthy conduct. During the consultation procedure, Azerbaijani authorities informed the rapporteurs that a joint working group was set up in order to intensify cooperation between the Centre for work with municipalities of the Ministry of Justice and the State service for Property Affairs (Ministry of economy) in order to ensure compliance with legislation in the field of municipal land management, increase efficiency and provide methodological assistance to municipalities.

167. 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 municipalities, in particular in rural areas, do not have sufficient well-trained staff capable of preparing and executing the council’s decisions.

168. The opportunity to adapt the internal administrative structure of municipalities to local needs is further restricted in practice by the severe difficulty in hiring qualified staff. Recent amendments and additions to the Law on Municipal Service related to the staffing of municipalities as well as several training programmes coordinated by the Ministry of Justice have reportedly started to improve the situation, which however remains not satisfactory.

169. For example, since municipalities are not labelled as a part of public administration, their officials are not considered as public servants, but the Law on Municipal Service nevertheless provides that admission to the municipality service is arranged by competition. Furthermore, municipal staff has in principle the right and the opportunity to participate in the vocational training available to their counterparts in the state administrative structure. While state officials may attend vocational training courses sponsored by the state, municipal employees are participating much less frequently due in particular to the lack of financial resources and to the limited support received by their municipalities that traditionally do not invest in training of their staff. All in all, working for municipalities remains less attractive than working in the state administration. Salaries remain not competitive and personal development opportunities are limited.

170. The Law on Rules of Ethical Conduct of Municipal Servants contains the basic ethical rules that apply to municipal employees, focusing in particular on the prevention of corruption and of conflicts of interest, on the secrecy of information connected to the public responsibilities. The anti-corruption plans developed in the country<sup>31</sup> generally affect municipal staff too. The government has recently adopted a promising 2019-2025 Civil Service Development Strategy, which contains a series of measures targeted towards the professional development of civil servants. The delegation could not receive information as to whether and to what extent this strategy extends to municipal staff or is only targeting state employees. It would be in any case advisable to include municipal personnel in the strategy.

171. Despite some efforts in improving professionalism of the staff, including recruitment on a merit-basis, adequate training opportunities, remuneration and career prospects, as required by Article 6.2 of the Charter, are not provided. After the remote meetings, the rapporteurs were informed by the Government that a work was underway to provide local self-governments with highly qualified personnel. The rapporteurs will keep a follow-up on this issue. However, they conclude that at the moment of the monitoring, the situation in Azerbaijan is of only partial compliance with this provision.

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31 See inter alia [http://www.oecd.org/corruption/acn/Azerbaijan\\_Report.pdf](http://www.oecd.org/corruption/acn/Azerbaijan_Report.pdf) and the Fourth Evaluation Round – Second Compliance Report on Azerbaijan, adopted by GRECO at its 82nd Plenary Meeting (March 2019), GrecoRC4(2019)3, available at <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/168094f9b1>

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

#### Article 7

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.
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.

#### 3.6.1 Article 7.1

172. Article 7.1 of the Charter mirrors, for democratically elected members, what the provision of Article 6 establishes for professional bureaucracy. It “seeks to ensure that citizens are free to serve as elected representatives and are not prevented from holding political office owing to financial or material considerations” (Contemporary Commentary, Paragraph 107). Accordingly, next to the Law on the Rules of Conduct for Municipality Officials, also a Law on the Rules of Conduct for Municipality Members has been adopted.

173. Article 15 of the Law on the Status of Municipalities lays down in detail the conditions that apply to elected councillors when performing their functions. Members of municipalities (councillors) who work for the municipality and receive a monthly salary from it cannot work elsewhere, except for scientific research, creative and teaching engagements. Permanent work for the municipality is incompatible with the status of municipal servant. Those who are not paid by municipalities because they earn their salary from other sources have the right to keep their activity and corresponding remuneration, unless the municipality needs them to work full time, in which case the municipality must notify the employer of the elected member and pay the salary to the councillor.

174. The number of members of the municipality (including the chairman and his/her deputies) exercising their powers on a permanent basis is limited by law, depending on the number of members in each municipality: 2 in municipalities with 5 or 7 members, 3 in municipalities with 9 or 11 members, 4 in municipalities with 13 or 15 members, 5 in municipalities with 17 or 19 members. In practice, however, as the Law on the Fundamentals of Municipal Finance provides that salary allocations may not exceed 50% of the total budget of the municipality, such a restriction poses a problem for non-urban municipalities, which make up 80-85% of all municipalities in the country. Because the annual budgets of these municipalities are very low, only the chairperson of the municipality may be paid a salary among the municipal members.

175. If members of municipalities resign from office, a new election is held to replace him/her. Members of municipalities cannot be dismissed at the initiative of the administration or transferred to a low-paid job as a disciplinary sanction “without the prior consent of the chairman of the municipality” (Article 15.3 of the Law on the Status of Municipalities), a formulation which seems to imply that this may happen with the consent of the chairman. No information could be obtained on this provision and its practical use and effects.

176. In practice, the same shortcomings making it not attractive for staff to work in a municipality apply to elected councillors, including the chairman. Salaries are not competitive and especially in smaller municipalities the working conditions and infrastructural dotation are insufficient to carry out the functions in an appropriate way. Coupled with the mentioned difficulties to hire qualified staff, the exercise of functions of elected members of municipal councils faces a number of challenges, including the disproportion between the many responsibilities and the limited authority and financial security and the fact that the financial security of elected members is not sufficiently protected, less so after the referendum that, in 2016, has introduced in the constitution the civil liability for damage caused by municipal servants.

177. For these reasons, Article 7.1 of the Charter can be considered only partly respected in Azerbaijan.

#### 3.6.2 Article 7.2

178. Azerbaijan has not ratified Article 7(2) of the Charter.

179. The rapporteurs note, however, that Article 15 of the Law on the Status of Municipalities, referred to above under Article 7.1, if consistently applied, should be sufficient to fulfil the requirements of Article 7.2, whose aim is simply to ensure that local elected representatives receive “appropriate financial

compensation” and to avoid conditions preventing, limiting or even excluding potential local candidates from standing for office because of financial considerations.

### 3.6.3 Article 7.3

180. As mentioned above, the legislation lays down the functions and activities which are deemed incompatible with the holding of the elective mandate in the municipal councils. The Electoral Code also provides that local elected representatives cannot at the same time hold another position at local level or in regional or national government or in State or municipally owned enterprises.

181. This provision is fulfilled.

### 3.7 Article 8 – Administrative supervision of local authorities’ activities

#### Article 8

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
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.

#### 3.7.1 Article 8.1

182. Article 146(III) of 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 provides that “the relevant executive body must monitor compliance with the Constitution and laws by municipalities, municipal bodies and municipal officials” and that “relevant municipal commissions and voters may be involved in the implementation of administrative control over the activities of municipalities” (Article 52), although no information exists as to how the involvement of municipal commissions and of voters takes place.

183. The Law on the Status of Municipalities 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. The Azerbaijani authorities stressed in their comments that by way of Decree of the President of the Republic of Azerbaijan no. 162/1999 and Order of the President of 27 September 2003 formulated in application of the Law on Administrative Supervision over Activities of Municipalities, the competences of the “relevant bodies of executive power” are carried out only and directly by the Ministry of Justice. The legal supervision of municipalities is therefore exercised by the Ministry of Justice, more specifically by its Centre for Working with Municipalities, which, in addition to its supervisory work, provides methodological support for and legal advice to municipalities. The methodological reason for the supervisory power on legality being vested with the Ministry of Justice seems to be the fact that the charters of municipalities must be registered with that Ministry.

184. The Ministry of Justice also reports yearly to Parliament on its supervision activity on municipalities. According to Article 9 of the Law on Administrative Control over the Activities of Municipalities, the Ministry of Justice prepares an annual report on the implementation of administrative control over the activities of municipalities and presents it to parliament. Through this report, the Ministry can also make proposals for changes in the laws governing the activities of municipalities.

185. The Law on the Administrative Control over the Activities of Municipalities provides 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, decrees of the President and decisions of the Cabinet of Ministers. Pursuant to these rules, the supervision extends to overseeing and checking the legality of the work and actions of municipalities. The same 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 insufficient information is available about how this procedure is handled in practice (see above, Article 6.2), 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 and not to the supervision by state bodies in the first place.

186. Municipalities are obliged to forward their decisions no later than 5 working days after the date of their adoption to the Centre for Working with Municipalities in the Ministry of Justice for legal and administrative control. The Ministry has no power to suspend municipal decisions, but it can only recommend changes if it finds them unlawful or inappropriate. Municipalities can reapprove their decisions and in case of further disagreement a court case can be started. According to information provided by the Ministry of Justice, most cases of recommendations issued by the Centre for Working with Municipalities by way of supervision regard financial decisions. For example, the Law on the Fundamentals of Municipal Finance (Article 8.2) states that not more than 50% of the municipal budget can be spent for salaries, but in practice this is often the case. In general, litigation is reportedly limited.

187. 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 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”.<sup>32</sup>

188. After the Congress recommended to clarify the issue of reporting, in 2019 the process to amend the Law on the Status of Municipalities started, with a view of providing that reporting to Parliament is only on delegated powers and no (longer) on own powers of municipalities, and according to the authorities met by the delegation, no reporting of this kind has taken place so far. In any case, the very existence of a reporting to Parliament remains questionable and its purpose unclear, as it is difficult to imagine how the Parliament will supervise the activities of municipalities in this way. Even if the national authorities highlighted during the consultation process that this reporting should not be seen as an oversight of municipalities, the rapporteurs consider though that such an unusual process appears incompatible with the legislative function of a Parliament and with the aim of the Charter.

189. Financial supervision is exercised by the Ministry of Finance. According to Article 32.2.2 of the Law on the Budget System, municipalities and their national associations are required to submit proposals, by March 15 each year, for the implementation of projects on the adoption and implementation of local social protection, environment, economic and social development programmes, as well as the allocation of subsidies from the state budget to finance additional powers delegated to municipalities by legislative and executive authorities. The Ministry of Finance considers the proposals within 30 days and the relevant municipalities are informed about their acceptance. The law does not specify whether rejection of the proposals can be appealed, and no information has been provided in this regard as to the practical implementation of this provision.

190. 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. The Chamber of Accounts may exercise external state financial control in the form of audit, analytical activity and monitoring in municipalities and legal entities with shares of municipalities as an auditee. At the same time, the Chamber of Accounts has the authority to forecast, calculate and analyse the implementation of municipal revenues and expenditures within analytical activities. 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.

191. According to the law, local governments are obliged to carry out internal audits. The municipalities monitor the implementation of the local budget and at least once a year involve independent auditors for this purpose. In this area, the Chamber of Audits allows the activities of independent auditors.

192. 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)). According to the authorities, such provision has no control function: as the allocations are given based on requests by municipalities, it is normal that state authorities are informed on how the money is used. No

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<sup>32</sup> Opinion 518/2008 (Paragraph 37).

relevant information is available about the consequence of such reporting and the provision specifies neither the objective of this rule nor the power of the executive authorities in this connection. The rapporteurs consider it essential that such an obligation on municipalities does not result, in practice, in a hierarchical relationship between them and the respective executive authority. It must be recalled that state subsidies make up an important share of the municipal budget (see below, Article 9).

193. The rapporteurs note that the legal framework on supervision is not sufficiently clear. The Law on the Status of Municipalities does not specify that the competent authority is the Ministry of Justice, nor the meaning and the procedures of the possible involvement of “relevant municipal commissions and voters in the implementation of administrative control over the activities of municipalities”. Furthermore, and even more importantly, the law regulating reporting by municipalities has not yet been adopted. As to financial supervision, the de facto relationship between municipalities and local executive authorities in case of state subsidies remains unclear and potentially problematic. In this respect, the comments made by national authorities in the framework of the consultation procedure state that allocations from the State budget are provided to municipalities on the basis of their request, and that it aim at covering budget deficits or contributing to finance municipal budgets.

194. The rapporteurs refer to the Contemporary Commentary which provides that “from the perspective of local self-government, Article 8 is probably one of the most relevant, since “supervision” is the very opposite of autonomy, to the same extent as control is the very opposite of freedom or self-administration. The greater the supervisory powers of the higher levels of government are, the smaller the actual scope of local self-government will be” (Paragraph 126).

195. They also point to the Recommendation issued by Committee of Ministers of the Council of Europe to member States on supervision of local authorities’ activities,<sup>33</sup> which contain key principles and guidelines in the area of supervision. According to the Committee of Ministers, the 12 Principles of Good Democratic Governance are applicable to supervision. These principles include openness and transparency, the rule of law and competence and capacity. Administrative supervision should be governed by following principles and guidelines: a) the activities subject to supervision should be clearly specified by law; b) compulsory automatic administrative supervision should be limited to activities of a certain significance; c) administrative supervision should normally take place after the exercise of the competences (a posteriori); d) a priori administrative supervision should be kept to a minimum and normally be reserved for delegated competences; e) the law should define the time limit or period granted for the supervisory authority to perform the supervision; f) in the case of a priori supervision, absence of a decision by the supervisory authority within a specified time should mean that the planned activity may take effect.

196. These conditions are overall not given in Azerbaijan. For these reasons the rapporteurs consider that the requirements of Article 8.1 of the Charter are not met.

### **3.7.2 Article 8.2**

197. The practical operation of state supervision over municipalities is not entirely clear. On the one hand, the Law on the Administrative Supervision of Municipalities restricts this activity to the compliance with the Constitution, the laws, decrees of the President and decisions of the Cabinet of Ministers, this way introducing a legality control within the framework of Article 8.2 of the Charter. On the other hand, a number of other provisions and reported practices prove evidence of the existence of a broader control and influence which include the merit and may change the import of local decisions for reasons of expediency or policy assessment.

198. The latter are for example the provisions that refer to the possible involvement of voters in the implementation of administrative control over the activities of municipalities; the reference in the Law on the Status of Municipalities to the “relevant executive body”, which might open space for the local or central executive authorities, which are in any case in charge of the supervision of delegated activities carried out by municipalities; the fact that the Centre for Work with Municipalities of the Ministry of Justice might issue (non-binding) recommendations to municipalities without specifying whether these are only on legality (in which case they should be binding, although municipalities should retain the right to challenge them in ordinary courts) or also on merit (which would explain why municipalities may decide not to follow them, safe the right of the Ministry of Justice to challenge in court the decision of a municipality not to comply with the recommendation). Not least, the provision of the obligation for municipalities to report to Parliament is

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<sup>33</sup> Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities’ activities (adopted by the Committee of Ministers on 4 April 2019 at the 1343rd meeting of the Ministers’ Deputies). This recommendation includes an appendix with *Guidelines on the improvement of the systems of supervision of local authorities’ activities*.

inconsistent with a control on mere legality, as it is not for Parliament to check legality, nor to discuss the work of individual municipalities. Several sources report that, in practice, there are many interventions by the central government on the work of local self-government institutions.<sup>34</sup> The rapporteurs refer to the Contemporary Commentary which reminds that “checks on expediency are not prohibited by the Charter but are severely restricted, for they are held to be in contradiction with the very meaning of local self-government” (Paragraph 134).

199. It follows that the commitments required by Article 8.2 of the Charter are not fulfilled according to the rapporteurs.

### 3.7.3 Article 8.3

200. Article 8.3 of the Charter establishes the proportionality principle as far as supervisory activities are concerned, by providing that the intervention of the supervisory authority must be proportionate to the importance of the interests it intends to protect. Such proportionality shall be subject to judicial control.

201. Intervention by the supervisory authority should therefore be limited to the extent necessary, taking into account the relevance of the public interest at stake, or the seriousness of the legal violation allegedly committed by the local authority. As specified by the Contemporary Commentary, the supervisory authority “should first consider the possibility of “de minimis” action (warnings, requests, negotiations) before using more intrusive powers, such as annulling or suspending a decision, plan or project adopted at local level” (Paragraph 139).

202. According to the Venice Commission and the Directorate of Democratic Governance of the Council of Europe, the wide discretion given to the supervisory bodies, enabling these bodies to conduct a complete supervision over all the activities of the municipality, is in breach of the principle of proportionality guaranteed by Article 8.3 of the Charter. The Commission and the Directorate recommended that the principle of proportionality be adequately taken into account and clearly stated by the law, recalling the Committee of Ministers’ Recommendation R(98)12 on supervision of local authorities’ action, according to which administrative sanctions concerning local authorities representatives (including dissolution) should only exceptionally be allowed, and associated with effective guarantees to enable the free exercise of the local electoral mandate.<sup>35</sup> The rapporteurs note that the principle of proportionality has not been introduced in the Law on the Status of Municipalities.

203. As reported by the interlocutors met by the delegation, litigation on state supervision is practically non existing. The Constitutional Court informed the delegation that between 2004 and 2020 only 17 constitutional complaints were lodged related to the verification of the constitutionality of acts by municipalities, despite the fact that also individual complaints can be submitted. The Court rejected them (in a Chamber composition) as the issues were not of constitutional relevance and were mainly concerned with the disputing of facts. In practice, although municipalities – like any other subject – can file a constitutional complaint with the Constitutional Court, they do not take advantage of this opportunity.

204. For the Constitutional Court there are objective and subjective reasons for this. The objective reason is that most disputes over municipalities are related to the fair allocation of land and are therefore considered in civil proceedings, where the parties are citizens and registry offices. The subjective reason is the alleged “lack of competition” between municipalities and local executive authorities. The rapporteurs are of the view that such a lack of litigation does not necessarily mean that supervision works well, but rather that the autonomy of municipalities is so restricted, that they are not in a factual position to challenge formal or informal, proportionate or disproportionate check carried out by state authorities over their activities.

205. Several interlocutors met by the delegation confirmed that legislative changes are in preparation which will clarify aspects such as the minimum number of residents in the concerned municipality in order to prompt control by state authorities.

206. Given the still incomplete legal framework regulating supervision and reporting, and the overall very limited position of municipalities, the rapporteurs consider the conditions of Article 8.3 to be met only in part in Azerbaijan.

<sup>34</sup> Subgroup on Local Government and Public Administration reform of the Working Group 1 of the CSF EAP, Update on Public Administration and Local Governments Reforms in Eastern Partnership Countries, 2017, p. 25.

<sup>35</sup> Joint Opinion of the Venice Commission and the Directorate of Democratic Governance on the revised draft law making amendments to the Law “on the Status of Municipalities” CDL-AD(2014)022 Paragraph 61.

### 3.8 Article 9 – Financial resources

#### Article 9

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

#### 3.8.1 Article 9.1

207. Article 9.1 of the Charter lays down the two fundamental principles as far as financial arrangements for the local self-government are concerned: municipalities should have their own financial resources and they should be free to decide how to spend these resources.

208. Financial autonomy of municipalities is a constitutional principle in Azerbaijan. Article 144(l) of the Constitution establishes that municipal councils can impose local taxes and levies, approve local budgets and possess, use and dispose of municipal property. More detailed rules on municipal finances are laid down in the Law on the Status of Municipalities (Articles 32-46) as well as in a triad of laws: the Law on the Transfer of Assets to Municipalities, the Law on Municipal Finance and the Law on Municipal Territory and Lands. The Law on the Transfer of Assets establishes standards for determining municipal property and transferring it to municipal ownership. The Law on Municipal Finance defines principles of local finance, the basis for the local budget and the division of powers between the municipal council and local executive bodies. This law also regulates legal issues concerning the adoption, implementation and monitoring of local budgets. The Law on Municipal Territory and Lands impacts on the municipal revenues but as the issue of municipal demarcation is not entirely completed so far, it results in further diminishing the municipal own resources. A number of other laws are relevant, such as the Tax Code, the Law on Budget System, the Law on Advertising and others.

209. The Azerbaijani budget system is divided in three levels, formally separated from one another: the central government budget (state budget), the budget of the Nakhichevan Autonomous Republic and the local (municipal) budget. The share of municipal revenues amount to 0.15 percent of the consolidated state budget: 34.97 million AZN out of a state budget of 24.1 billion AZN in 2020. Therefore, while each level, including municipalities, has the right to determine income and expense in line with existing legislation and budget classification (Law on Budget System, Article 3), in practice taxing and spending autonomy for municipalities remains irrelevant, despite a slight increase in annual revenues of municipalities as compared to the last monitoring in 2012.

#### Annual budget of municipalities

Year	Number	Budget, thousand manat	annual budget per municipality on average, manat
2020	1606	34,970.6	21,775
2019	1606	36,381.8	22,654
2018	1606	35,973.7	22,400
2017	1606	36,079.4	22,465
2016	1606	31,617.2	19,687



2015	1607	30,803.9	19,169
2014	1607	49,065.7	30,523
2013	1716	47,209.7	27,512
2012	1718	35,860.5	20,873

**Source: State Statistics Committee**

210. The growth trend was initially much stronger as shown by the rate between 2012 and 2014 but has been severely slowed down by the devaluation that took place in 2015, which again penalized municipalities disproportionately as compared to other levels. Data for 2020 show that the annual budget for municipalities decreased due to the effect of the COVID-19 pandemic.

211. The municipal budget is formed by three sources of income: tax income, non-tax income and state transfers, in form of dotation or subvention. Projects implemented by municipalities on behalf of the government or submitted by municipalities to the approval of the government can be funded by the state on top of the ordinary budget.

212. According to the Tax Code, municipal taxes are the following: 1) land taxes on private individuals; 2) property taxes on private individuals; 3) mining tax on construction materials of local importance; 4) taxes on the profits of municipally owned enterprises and other bodies. The non-tax incomes are those produced by levies that municipalities can impose: 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; levy on parked cars in parking lots owned by legal and physical persons in the municipal territories.

213. Additional transfers from the state budget in form of dotation (unconditional financial aid) and subvention (earmarked transfers) amount to 5.7 million AZN (4.7 million dotation, 1 million subventions) in 2019, which accounts for 0.02% of the total state budget expenditures. This is due to the 2014 amendments to the criteria for both unconditional and conditional financial aid in the Law on the Budget System, which now include the number of residents in the municipality, their fiscal capacity, the geographical location of municipalities, the living standards and the socio-economic projects being implemented in the area. Further amendments have facilitated subventions from the state budget to the municipalities for the implementation of projects in the fields of local social protection, environment and economic and social development programmes.

214. The slight growth of municipal tax incomes is mainly due to the changes introduced in 2014 to the tax base of property tax of individuals. Since then, the property tax is no longer collected on the inventory value of a house owned by individuals, but on the surface of estate property. This increased the taxation of property because the inventory value could be calculated only on houses and flats that had a registration certificate from the state, thus excluding a number of properties from taxation, especially in rural areas, which had no such certificate – in fact most of the revenue came from the biggest urban areas (Baku, Ganja, Sumgayit, Mingachevir and Shirvan) and very little from rural municipalities. According to information received by the delegation, the change is not yet entirely completed, but it has doubled the income from property taxes of individuals, from 3.7 million AZN in 2012 to 7.6 million AZN in 2019.

215. The positive effect of the new criteria for calculating the property tax was however negatively compensated by amendments introduced in the Tax Code in 2016 (Articles 206.1-1 and 206.3), which established that part of the revenues from the land tax of individuals be deducted from the state budget. This way, if farmlands owned by individuals are not used for their intended (agricultural) purpose, the taxes levied on those lands are directed to the state budget. The delegation was informed that this way municipal revenues decreased by 15.4% from 6.5 million AZN in 2012 to 5.5 million AZN in 2020.

216. As mentioned, there has been an overall increase of state transfers (dotation and subvention), to the municipalities, although this source also remains insufficient to cover the needs of municipalities. In 2019, for example, a total of 4.95 million AZN was subsidized to 1,606 municipalities operating in the country, which makes on average about 3,000 AZN per municipality. As to earmarked financial assistance, this has been provided over the last two years only. Until then, only the subsidy mechanism was used. By Decision of the Cabinet of Ministers of May 13, 2020, modular sewage treatment plants installed on the shores of the Caspian Sea on the balance of the Ministry of Ecology and Natural Resources together with their property have been transferred to 5 municipalities: Buzovna, Binagadi, Bilgah, Pirshagi and Sumgayit. A limited liability company was established to manage the modular wastewater treatment plants and other assets.

For this purpose, the mentioned municipalities were allocated 3.8 million AZN from the 2020 state budget in coordination with the Ministry of Ecology and Natural Resources and Azersu Open Joint-Stock Company.

217. The increase of state transfers, while positive in terms of amount of money managed by municipalities, has an adverse effect on their financial autonomy, as it makes municipalities financially even more dependent on the state budget. The dependence of the budget of the Nakhchivan Autonomous Republic on the state is much bigger, as state transfers amount to 75-80% of the budget. The share of local and regional budgets in state budget spending is around 2%.

#### Central government transfers to local and regional budgets

Indicators	Unit of measure	Indicators by year						
		2014	2015	2016	2017	2018	2019	2020
Subsidies to Nakhchivan AR from the state budget	AZN mln	283.70	297.70	282.35	278.9	281.90	300.36	370.58
Share of financial assistance allocated from the state budget in the budget of Nakhchivan AR	in percent	79.29	80.14	79.32	77.74	76.46	75.77	76.05
State budget subsidies to local budgets	AZN mln	5.19	5.19	5.19	5.19	5.19	5.69	5.71
Share of financial assistance allocated from the state budget in local budgets	in percent	10.58	16.85	16.41	14.38	14.43	16.63	16.4
Total sum of financial assistance allocated from the state budget to local and regional budgets	AZN mln	288.89	302.89	287.54	284.09	287.09	306.05	376.29
Share of financial assistance allocated from the state budget in local and regional budgets	in percent	71.00	75.30	74.19	71.95	70.95	70.72	72.05

**Source: Law on the State Budget, Law on the Budget of Nakhchivan AR, State Statistics Committee**

218. The extremely low level of municipal revenues is insufficient to fulfil even the very limited tasks and functions entrusted to municipalities by legislation. The lack of funds prevents municipalities 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 and more broadly socio-economic activities. Municipalities are heavily dependent on financial transfers from the state, and also are factually subordinated to the local executive authorities, which have much greater capacities in terms of personnel, finance and formal powers. In fact, local executive authorities rely on much stronger financial guarantees, including by the provision that reserves 50% of the collected tax income for the use of local executive authorities: in 2019, the total amount of such income received by local executive authorities was 28 million AZN.<sup>36</sup> As confirmed by financial authorities, local executive authorities can simply apply to the state budget to cover their expenses should their resources not suffice. The same can in principle be done by municipalities too, but this is not frequently happening due to the political irrelevance of municipalities, which rather solicit local executive authorities to intervene with the government, as confirmed by local representatives.

#### State subsidies to municipalities

<sup>36</sup> <https://economy.gov.az/article/regionlarin-2019-2023-cu-illerde-sosial-iqtisadi-inkishafi-dovlet-proqraminin-icrasinin-birinci-ilinin-yekunlarina-hesr-olunan/30687>

Year	Subsidies allocated to municipalities from the state budget (million AZN)
2000	4,3
2002	5,0
2003	1,0
2004	2,0
2006	3,0
2007	3,5
2012	5,0
2013	5,2
2014	5,2
2015	5,2
2016	5,2
2017	5,2
2018	5,2
2019	4,7
2020	5,0
2021 forecast	5,1

Source: Ministry of Finance

219. Financial dependence from the state is in sum the main weakness of Azerbaijani municipalities. Their financial autonomy provided by the law is not sufficient to safeguard their capability to carry out their functions, as their own resources are minimal and force them to either underperform or to rely disproportionately on state money. This 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. At the same time, as long as they are irrelevant in the overall governance of the country, the pressure to increase their financial dotation and autonomy will remain weak.

220. From the above, the rapporteurs conclude that the commitments established by Article 9.1 of the Charter are not met in Azerbaijan.

### 3.8.2 Article 9.2

221. Article 9.2 requires that “any new task assigned or transferred to local authorities must be accompanied by the corresponding funding or source of income to cover the extra expenditure” (Contemporary Commentary, Paragraph 150). As it is difficult to pre-determine in abstract terms the commensurability between revenues and mandatory functions, the consolidated interpretation of the Charter requires that “any transfer of powers and tasks be based on careful calculation of the actual service delivery costs to be met by local authorities” (*ibidem*), with a view to safeguarding the interests and the autonomy of local authorities.

222. In Azerbaijan, the Constitution and the laws entrust a number of functions to municipalities that, albeit limited especially if compared to the standards of other countries including in the region, are anyway more numerous and significant than they perform in practice. Article 144(I) of the Constitution and article 4, 5 and 6 of the Law on the Status of municipalities establish that municipalities be responsible for programmes in the area of local social security and social development; local economic development; and local ecological programmes, including more specifically preschool and school education, health, culture, use of local water sources, planting and renovation, waste collection, transportation, construction and maintenance of local roads, social protection of the people in need and protection of cemeteries.

223. In reality, however, most of these activities remain under the authority of local executive bodies and other government-led institutions. Furthermore, the activities that are entrusted to municipalities in an exceptional manner, such as the construction and maintenance of roads in the municipality area, are often not sufficiently financed from the central budget to execute the duties in full scale. The government pointed

out that in other cases municipalities are allocated the full amount of funds for road construction and maintenance, mentioning the positive example of Bakikhanov which has received subsidies for 227,000 AZN to this end.

224. 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). This means that the state government is obliged to ensure the budgetary independence of local governments and compliance of local budgets with state standards. To this end, the government may allocate the necessary funds to local budgets, and if it passes a resolution that results in increased local expenditures, it must determine a sum to be transferred to the municipality in compensation. As mentioned, this process increases financial dependence of municipalities from the state.

225. The same applies with regard to the local executive authorities. The Law on the Budget System also guarantees that if the revenues of municipalities fall or their expenditure rises as a result of the decisions taken by executive authorities, the local executive authorities that take such decisions have to compensate them with increased amounts. In spite of these formal guarantees, when municipalities fulfil the functions of local executive bodies they often do not receive sufficient central government support, which raises additional concern as to whether the principle of concomitant financing applies in practice.

226. It appears that the relationship between activities and funding is caught in a vicious circle. Municipalities cannot perform most of the tasks that in principle the laws would attribute to them because they lack the commensurate financial means, and the absence of sufficient financial means is due to their inability to perform the tasks they are supposed to carry out. This in a way results in extremely limited responsibilities and equally limited financial resources, that can of course not be read as fulfilling the requirement of commensurability between financial resources and responsibilities required by Article 9.2 of the Charter, but rather the opposite.

227. In light of the above, the rapporteurs consider Article 9.2 of the Charter not to be respected in Azerbaijan.

### **3.8.3 Article 9.3**

228. The Charter also requires that a proportion of local revenues should come from local taxes, and municipalities must be able to determine the rate applicable. These are two sides of the same coin, as local taxes are not only an important source of funding for local authorities, but also represent the precondition for the ability to make political choices and thus to create political accountability.

229. As mentioned above (Article 9.1), the revenues from municipal taxes remain insufficient. While the right to impose taxes and levies is in theory one of the municipalities' most important powers, a great majority of these sources of income do not in practice help to form sustainable sources of revenue for municipalities. In spite of the legal entitlement, and of some improvements due to the reforms that introduced electronic payments, municipal taxes are still not imposed, or not collected, in an efficient way, due to the poor human resource situation of local governments. Shortage of staff and equipment, and lack of expertise make it close to impossible to exercise the municipal right to levy taxes in an efficient way. 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.

230. Furthermore, also some legal obstacles make it difficult to establish a functioning financial autonomy of municipalities. For example, taxes on land are still difficult to be collected, especially in some parts of the country. 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 provides 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" (Article 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.

231. Despite improvements as compared to the previous monitoring, the legislation providing that the State Land and Mapping Committee must submit maps of the municipal lands to the body in charge of the State Registry of Municipalities and must indicate the size and the borders of each municipal territory is still not fully implemented. The process is in fact not entirely completed, apparently due to the lack of precise data to identify and define the boundaries of municipal property, in particular municipal land. Consequently, the transfer of property to municipalities has not yet been fully completed, which has an impact on the ability of municipalities to collect all the land and property taxes they are entitled to. The delegation was informed that the Cabinet of Ministers is working on achieving full documentation of buildings and land plots with a view to resolving the remaining problems, which apparently are more acute in some municipalities than in others.

232. Not only are municipal taxes limited in scope and amount as described above, but financial autonomy of municipalities is limited also as far as determination of tax rates is concerned. As pointed out by the Contemporary Commentary, “in the light of Article 9.3, a tax is a genuine local tax only if the local authority is entitled to determine the rate, “within the limits of statute”. Consequently, the applicable tax legislation may determine a band of tax rates, within which the local entity may freely determine the actual rate. Moreover, “local authorities should also have the power to approve internal by-laws or regulations for determining the technical and operational aspects of tax collection (types of rate, deductions, tax relief programmes, etc.), so that the general provisions of the law are suited to local circumstances and needs” (Paragraph 157).

233. In Azerbaijan, municipalities have in practice very limited power to determine the rates of local taxes. These are determined on the basis of the Tax Code, which is approved by the central government, and in most cases leaves no room to municipalities to tailor the rates on their specific demographic, geographic or socio-economic situation. Another example come from tariffs for advertisements owned by municipalities, which are determined by the Cabinet of Ministers in accordance with the Law on Advertising.

234. Article 9.3 of the Charter is fulfilled only in minor part and only on paper in Azerbaijan, to an extent that makes the overall situation only partly compatible with the Charter’s requirements.

#### **3.8.4 Article 9.4**

235. In order to protect local finances from negative effects in case of fluctuation in economic cycles, Article 9.4 requires a certain degree of diversification of income sources. As mentioned above (Article 9.1) over the last decade the municipal incomes have been impacted by the devaluation. More generally, this applies to the whole of Azerbaijani economy, which significantly relies on oil and gas.<sup>37</sup>

236. Legislation provides for diversification of municipal income sources and the right of municipalities to determine their spending priorities. However, the extremely limited functions carried out in practice by municipalities and their largely insufficient financial resources makes these rights much less significant in practice.

237. Diversification also derives from the transfer system. The Law on Budget System envisages transferring of special funds (earmarked or targeted funds) and general-purpose funds to the budget of municipalities, although the former (earmarked funds) has been implemented only once with regard to the transfer to five municipalities of the management of a module type equipment for cleaning dirty water.

238. Some steps have been taken to improve transfers of financial aids from the state budget municipalities, such as in particular the changes introduced in 2014 to the Law on Budget System which have introduced more differentiated criteria for unconditional financial aid. These now include the population size, the proportional weight of the municipality in the formation of the country’s financial resources, revenues, and expenditures, the geographical location, the living standards, and the socio-economic projects being implemented in the area.

239. Also the mechanisms for the allocation of conditional financial aid have been improved to facilitate state subventions for the implementation of projects in the fields of local social protection, environment, economic and social development programmes, as well as financing additional authorities of municipalities granted to them by the law and handed over by the local executive committees.

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<sup>37</sup> See Council of the European Union, *Cooperation Implementation Report on Azerbaijan, 2020*, 14189/20, SWD(2020) 365 final, p. 1.

240. In practice, as the overall degree of financial autonomy of municipalities remains negligible, also the significance of the differentiation of their resources is far more limited than it could be based on the legislative provisions. In recent years, some improvements have been introduced to tackle the insufficient transparency in the calculation and distribution of subsidies and subventions from the state budget to local budgets, such as the amendments in the Laws on Budget System and on Local (Municipal) Taxes and Fees. Some difficulties however persist, as both block and special grants are not yet distributed in a predictable way on the basis of clear criteria, established in cooperation with the national municipal associations.

241. The rapporteurs therefore conclude that the current situation is in partial compliance with Article 9.4 of the Charter.

### **3.8.5 Article 9.5**

242. Azerbaijan has declared itself not bound by Article 9.5 of the Charter.

243. Despite the fact that the Law on the Budget System provides the legal basis for covering local budget deficits from the state budget, no standardised financial equalisation procedures or equivalent measures exist with regard to the municipal level of government in Azerbaijan and existing criteria for state subsidies do not differentiate based on population or performance among municipalities.

244. The rapporteurs remind that the absence of a consistent financial equalisation system is an obstacle to both a less differentiated performance in the different territories of the country and to the real development of the municipal level more in general.

### **3.8.6 Article 9.6**

245. Azerbaijan has declared itself not bound by Article 9.6 of the Charter, which establishes that local governments must be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

246. It must be noted, however, that interlocutors met by the delegation, including the national associations of municipalities, the Chamber of Accounts and representatives of the Parliament, were unanimous in mentioning that consultation of municipalities, mainly through their national associations but also individually, is regularly taking place, especially in financial matters. As mentioned, no example or detailed information was provided to the delegation in this regard. However, the rapporteurs point out that if such consultation happens regularly and effectively as the authorities claim, there should be no obstacle in formalising such processes in legislation and in ratifying the provision of Article 9.6 of the Charter, as this would be easily considered to be fulfilled based on such practice.

### **3.8.7 Article 9.7**

247. According to the Law on the Budget System (Article 35(2)), if a municipality receives a subsidy from the state budget, its draft budget has to be submitted to the relevant executive authority. While the aim of such provision is to allow for control over the use of earmarked funds, the scope and the consequences of such control remain unclear. Given the uneven position of municipalities, the rapporteurs expect that this mechanism does not create a de facto hierarchical relationship between municipalities and the respective executive authority, which would contradict the principle of budgetary autonomy of the levels of government.

248. The legislation provides for the financing of the transfer of powers. For 20 years since the establishment of municipalities, there have been no cases of transfer of powers to municipalities, with very minor exceptions, and in some cases the powers were transferred without being accompanied with financial transfers. For example, although the maintenance of cemeteries was entrusted to municipalities, no funds were allocated accordingly, and until 2018 their maintenance had to be carried out at the expense of the municipal budget. According to interlocutors met by the delegation, the "Rules for Construction and Management of Cemeteries" approved by Resolution No. 522 of the Cabinet of Ministers in December 2018 have improved but not yet solved the issue.

249. In 2020, as mentioned, the first case of transfer with financial support took place, when modular sewage treatment plants installed on the shores of the Caspian Sea, owned by the Ministry of Ecology and Natural Resources, were transferred to 5 municipalities: Buzovna, Binagadi, Bilgah, Pirshagi and Sumgayit. To that end, a limited liability company (Azsü Ecological Plant LLC) was established to manage these plants and

other fixed assets. For this purpose, the mentioned municipalities were allocated 3.8 million AZN from the 2020 state budget.

250. As mentioned under Article 9.1, transfers from the state budget in form of dotation (non-earmarked transfers) and subvention (earmarked transfers), albeit insufficient to compensate the limited own revenues of municipalities, have increased in the last years and amount to 5.46 million AZN in 2020 (4.7 million dotation, 760 thousand subventions). The state budget 2020 includes a significant increase of subsidies and subventions allocated to the municipal budget (see respective table under Article 9.1). This confirms a shift in the financing of municipalities further increasing the financial dependence from the government.

251. Furthermore, as mentioned under Article 9.4, despite improvements that have made criteria more transparent and more differentiated, the allocation of general grants is not such that it enables municipalities to know in advance how much they are to receive in transfers and to strengthen their planning capacity. Overall, both the amount and the criteria for transferring state grants result in strengthening the dependence of municipalities from the state budget. Such a de facto hierarchical relationship does not comply with the standards required by the Charter and contributes to limit municipal freedom to exercise policy discretion within their jurisdiction as required by Article 9.7.

252. Article 9.7 is therefore only partly respected in Azerbaijan.

### **3.8.8 Article 9.8**

253. Based on the Constitution and the relevant legislation, Azerbaijani municipalities are private subjects. This allows them to more easily establish companies and to freely operate on the markets, at least in principle. During the consultation process, the government informed the delegation that, especially in the last couple of years, municipalities have started to set up enterprises operating in various fields.

254. The Law on the Status of Municipalities establishes that municipal authorities may coordinate the participation of legal entities and individuals in the complex socio-economic development of the municipal territory (Article 36.2). No specific information was provided in this regard.

255. The Law on the Fundamentals of Municipal Finance establishes in Article 14.3.2 that municipalities have the right to receive short-term and long-term loans from banks and other credit companies that have their seat in the Republic of Azerbaijan.

256. In 2013 the Cabinet of Ministers passed a Resolution (no. 148) on "Approval of rules of registration of indicators financial and economic activity of the municipal companies and the organizations". Under the new rules, companies and the organizations legally subordinated to municipalities shall draw up quarterly and annual financial reports on their activities and must submit them to the relevant authorities and ensure their publication.

257. Based on the information provided, the rapporteurs consider that, as the criteria are met in legislation but not in practice, the commitment under Article 9.8 of the Charter seems to be partially met in Azerbaijan.

### **3.9 Article 10 – Local authorities' right to associate**

#### **Article 10**

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

#### **3.9.1 Article 10.1**

258. As of 2006, three national municipal associations exist in Azerbaijan, representing the interests of the various types of municipalities (villages, towns and cities). Although no exact data are available on the membership of these associations, all sources concur in indicating that most municipalities 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 (Article 10). 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.

259. Interlocutors pointed out to the delegation that the associations are regularly consulted by Parliament and by the relevant Ministries on issues that are relevant to municipalities. However, legislation is not clear in this respect and no specific right of municipalities or municipal associations to be consulted on these matters or on decisions of the central government authorities affecting local government interests is expressly provided.

260. Only two exceptions seem to exist in legislation requiring consultation of the municipal associations. One is the case of boundary changes among municipalities. The other case in which consultation is required by law is the amendment introduced to Article 32.2.2 of the Law on Budget System by the law of June 20, 2014, according to which national associations of municipalities can submit proposals to the relevant executive authority to allocate subsidies to municipalities from the state budget. Even in such case, consultation remains indirect (proposals go through local executive authorities) and its effects are not specified, but it appears that no legal means exist to veto any decision by the state.

261. Associations are not obligatorily consulted on central government plans or decisions that primarily affect the interests of municipalities and presumably for this reason have no regular opportunities to influence the local government policies of the central government authorities. It appears that consultation happens arbitrarily and in an irregular fashion, mostly informally and often through the local executive authorities and/or political channels. For sure, no general right is established for municipalities and their associations to be consulted by state authorities in due time on all relevant issues, as required by the Charter.

262. Associations are said to provide assistance to municipalities on legal and administrative issues and to organise trainings for municipal staff. However, no information is available 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, the national associations of municipalities do not play an important role in central policy-making or in representing local interests in Azerbaijan and it seems that they were only established in order to comply formally with the requirements of the Charter and that they do not engage in any significant activities.

263. Article 10.1 of the Charter also implies that municipalities shall be guaranteed a general right to co-operate with one another in order to deliver local services or discharge their responsibilities. This is particularly important in terms of delivering services, in view of the fact that many municipalities are too small or too weak (financially, organisationally and politically) to deliver all the services they are supposed to or to carry out any meaningful local strategy or policy. It is worth noting that the associations do not even have a website, which testifies of their role in practice.

264. Inter-municipal cooperation has not been outlined as problematic by any of the interlocutors met by the delegation. The mayor of Saray reported that a constant exchange is in place with the neighbouring municipalities, especially within the framework of the district municipal chairpersons council, but no specific forms of formalized co-operation were mentioned. It appears that also intermunicipal co-operation is carried out primarily through informal ways.

265. Based on the situation on the ground, whereby consultation takes place irregularly and as a matter of practice but is not sufficiently guaranteed in legislation, the rapporteurs are of the view that the commitments stemming from Article 10.1 of the Charter are only partly met in Azerbaijan.

### **3.9.2 Article 10.2**

266. As mentioned above, national associations for each of the different category of municipalities exist and operate in Azerbaijan, although their impact and influence on determining policies for the local level and on assisting municipalities in better performing their tasks remain limited.

267. No limitations exist in the law with respect to the right of each municipality to join said associations and reportedly most municipalities are indeed members.

268. For these reasons, the rapporteurs conclude that the legal and practical situation is in compliance with the provision of Article 10.2 of the Charter.



### 3.9.3 Article 10.3

269. In 2019, the Law on the Status of Municipalities was amended to incorporate new standards to guide arrangement, by the appropriate executive authority, of municipality activities and experience exchanges with self-government bodies in other countries, as well as their associations and professional organisations to enhance the professionalism of the national municipality members and officials.

270. This change has allowed Azerbaijan to lift the previous declaration of not being bound by Article 10.3 of the Charter and to include this provision as part of the binding commitments under the Charter. The rapporteurs commend this move, which shows a positive attitude towards the Charter and a spirit of openness towards the development of local self-government.

271. The new Article 10-1 of the Law on the Status of Municipalities enables municipalities and associations of municipalities to enter into cooperation agreements with local self-government bodies of foreign countries and become members of specialized organizations of local self-government bodies. This can happen, however, only “in coordination with the relevant executive authority”. Also the exchange of experience with local self-government bodies of foreign countries, their associations and specialized organizations has to be organised by the relevant local executive authority.

272. The government informed the delegation that about 30 agreements are in place with municipalities in a dozen of foreign countries. No interlocutor mentioned to the delegation any practice in this regard, nor any problems faced by municipalities in international exchange and cooperation.

273. Given the dominant role of the local executive authorities in this regard, the rapporteurs consider the commitments under Article 10.3 of the Charter to be met.

### 3.10 Article 11 – Legal protection of local self-government

#### Article 11

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.

274. Article 146(V) of the Constitution states that “the judicial protection of municipalities, and compensation for additional expenditures resulting from the decisions of state bodies, shall be guaranteed”. Article 50 of the Law on the Status of Municipalities, instead, in regulating the “judicial protection of local self-government”, focuses on the protection of the citizens’ right to local self-government, stating that “citizens living in the territory of the municipality, municipalities, municipal bodies and officials of municipal bodies shall file a lawsuit to invalidate acts of state authorities and state officials, municipalities, municipal bodies and officials of municipal bodies, legal entities established by municipalities, as well as public associations violating the rights of local self-government”. The same approach emerges in Article 53 of the same law, which ensures that “decisions and actions (or inaction) of municipalities, municipal bodies and their officials may be appealed in an administrative manner and/or in court”. Legislation seems more concerned with the right to challenge decisions by municipalities than with the right of municipalities to self-government, as this right does not belong to municipalities but rather to the citizens.

275. Such an approach derives from the peculiar condition of municipalities in Azerbaijan, which 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 on the Status of Municipalities states (Articles 2 and 3). Accordingly, municipalities have the same position as citizens, companies or NGOs as far as challenging laws and other legal acts is concerned.

276. Consequently, municipalities are entitled to lodge a direct complaint with the Constitutional Court, as everyone can do, “against acts of the state” that violate their rights. This right, however, is not used by municipalities and there are no precedents, as the delegation was informed by the Constitutional Court. In practice, therefore, this is not an effective remedy to safeguard the free exercise of the powers of municipalities. As the delegation has been told, there is apparently no tradition and culture of judicial challenge on the side of municipalities.

277. The Constitutional Court deals, inter alia, with issues regarding the “conformity of acts of municipalities with the Constitution and laws of the Republic of Azerbaijan, decrees of the President of the Republic of Azerbaijan, resolutions of the Cabinet of Ministers of the Republic of Azerbaijan” (Article 130(III)5 of the Constitution). Between 2004 and 2020, the Constitutional Court received 138 complaints from citizens on the verification of conformity of judicial acts on the activities of local self-

government bodies (municipalities) with the Constitution and laws, 17 of which in 2020, against municipalities, 7 of which reached the plenum, while the others have been adjudicated in chamber. Nearly all cases were individual complaints on property disputes, which are the main source of litigation involving municipalities, since the separation between state land and municipal land is not regulated by law yet and in several cases it is not clear who owns certain parts of land and who can sell them or collect taxes on them. As mentioned, no case was brought by municipalities challenging laws or regulations.

278. Against this background, it has to be reminded that, for Article 11 to be fulfilled, “it is not enough if, in a given member State, local authorities are granted the right to bring legal actions in a court of law in the same manner as any other legal entity (for instance, a business) in order to defend its private rights or property. The Charter refers to the ability of local authorities (as cogs in the wheels of public administration) to bring actions under public law against other levels of government (inter-governmental litigation)” (Contemporary Commentary, Paragraph 211).

279. Some litigation arises by way of supervision over municipalities carried out by the Ministry of Justice (see above, Article 8). In case the recommendations issued by the Centre for Working with Municipalities on the compliance with laws and regulations are not followed by municipalities, the Ministry of Justice can take the issue to a court. According to information provided by the Ministry of Justice, by the national associations of municipalities and by the Constitutional Court, judicial cases of this kind are rare. In 2020, according to the annual Report on the implementation of administrative control over the activities of municipalities by the Ministry of Justice, the Ministry filed 13 lawsuits to annul the decisions of municipalities, two of which were settled and 11 were taken to court.

280. More frequent are complaints brought to (district or urban) courts by citizens and legal persons against acts of municipalities or of their officials, mostly regarding property and land issues due to the mentioned unclear division between state-owned and municipal-owned land and the resulting uncertainty in terms of ownership and lease.

281. According to information provided by the Ministry of Justice, no precedent exists so far in Azerbaijan in which a court has found an act or a measure by either municipalities of the state to be in violation of the European Charter of Local Self-Government.

282. As the right to judicial protection is provided essentially against, rather than for, municipalities and other litigation is substantially non-existent in Azerbaijan, the rapporteurs conclude that the commitments under Article 11 of the Charter are not fulfilled.

#### **4. OTHER MATTERS RELATED TO THE FUNCTIONING OF LOCAL AND REGIONAL SELF-GOVERNMENT**

##### **COVID-19**

283. Like all other Member States of the Council of Europe, Azerbaijan has been affected by the COVID-19 pandemic as of early 2020. Also in Azerbaijan the reaction to the emergency has had a significant impact on local self-governance.

284. The response to the health crisis with all related action has been firmly in the hand of the national government from the very beginning. The President of the Republic of Azerbaijan has established a Task Force under the Cabinet of Ministers. The main measures are taken by the Task Force and by central authorities. Municipalities carry out awareness-raising activities with citizens in their territories, help the elderly and residents in need of social care and participate in other events, although primarily in support of the action taken by the local executive authorities. A few large municipalities have taken some own initiative to help socially vulnerable groups, but this happened only sporadically and within the narrow margins of the available financial resources.

285. The impact of the COVID-19 crisis on municipalities has been mainly financial and is reflected in declining revenues from local taxes and fees. In particular, entrepreneurs who have suffered certain losses as a result of a pandemic were provided with tax benefits and were temporarily exempted from property tax and land tax, which are the main own incomes of municipalities.

286. According to information provided by the Ministry of Finance, 1,985.9 billion AZN was allocated from the 2020 state budget to fight the COVID-19 pandemic. 612.5 million AZN out of this amount was spent for

the payment of allowances of medical workers, purchase of necessary medical supplies and equipment, increase of the hospitals' bed capacities, maintenance of specialized hospitals, reimbursement of expenses for services rendered in institutions hosting persons under quarantine. 1,334.1 billion AZN was allocated to finance measures to reduce the negative impact of acute fluctuations in global energy and stock markets on the economy of the country, macroeconomic stability, employment and entrepreneurship. To support businesses, a wide number of interventions took place, from coverage of salaries of more than 243,000 private sector employees to subsidies to small entrepreneurs, from the support to unemployed people to the creation of additional 50,000 paid public jobs to increase employment opportunities.

287. It has to be reminded that the outbreak of the pandemic was concomitant with the drop of oil prices, which has put the country in a double crisis. The package of measures published in April 2020 by the Ministry of Economy aims at supporting Azeri society and economy in response to both.

288. No specific measure has targeted municipalities. No authority was delegated to municipalities in the framework of the fight against the pandemic. Rather, socio-economic activities, which in principle should belong to the competence of municipalities, have been directly enacted by the state and the local executive authorities. Financial assistance has been provided to the population and businesses who lost their income, but not to municipalities. While complete information on the financial situation of municipalities in 2020 has not yet been released, preliminary observations show a significant decrease in municipal budget revenues. As it seems, municipalities have not even informally been consulted.

289. The pandemic also reduced the opportunities for face-to-face meetings with citizens. While partly compensated by online events, the impact on the already limited citizens' participation has been significant, especially considering that the structural forms of participation provided for in the legislation are not frequently used in Azerbaijan.

### ***National minorities and vulnerable groups***

290. As pointed out by the Advisory Committee on the Framework Convention for the Protection of National Minorities in its last opinion on Azerbaijan from 2017,<sup>38</sup> the notion of "Azerbaijani multiculturalism", as promoted by the authorities, creates an environment in which persons belonging to minorities feel the obligation to express loyalty to the state at the expense of their minority identities.

291. Meetings held by the delegation confirmed the impression that the prevailing understanding tends to underline formal equality of all citizens, irrespective of their belonging to minority or other groups, without considering minority status as a reason for special treatment. Some interlocutors pointed out that in territorial units where the majority consists of minorities, municipalities are formed mainly from representatives of the said minorities. This does not seem to entirely reflect the reality, also because no disaggregated quantitative and qualitative data exist on the situation and access to rights of persons belonging to national minorities. According to information provided by the Ombudsman, persons belonging to minorities are well represented in the staff of the institution, and the government maintains that this be the case also in the administration, in Parliament, and in law enforcement agencies, although no specific numbers have been indicated, nor the way the belonging to a certain community is determined. The government brought to the attention of the delegation the infrastructural and development programmes that are being carried out in the regions where persons belonging to national minorities reside in significant numbers.

292. As far as municipalities and local executive authorities are concerned, all written communication with them has to be done in the Azerbaijani language and more generally the protection and promotion of native languages of persons belonging to national minorities is not encouraged or supported by local authorities, except for the Russian and Georgian languages (ACFC, Fourth Opinion, Paragraph 66). Furthermore, the Advisory Committee has noted with concern the economic disparity between the capital region and the rural areas of the country, in some of which persons belonging to national minorities live in substantial numbers (ACFC, Fourth Opinion, Paragraph 91).

293. As mentioned under Article 6.1, a positive trend is to be noticed in regard to women's representation in municipalities, with a significant increase by 11% of elected women in the 2019 municipal elections as compared to previous elections in 2014. At present, 38.8% of the elected members of municipalities are women.

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38 Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Azerbaijan, adopted on 8 November 2017 – ACFC/OP/IV(2017)006.

**Other issues**

294. As municipalities are, from a legal point of view, similar to NGOs, the Opinion of the Venice Commission on the amendments to the Law on Non-governmental Organizations from 2014 has to be mentioned. The Commission notes that the legal and political environment for non-governmental organisations promoting human rights, including those of persons belonging to national minorities, continues to be problematic. The law reflects a “very paternalistic approach towards NGOs”<sup>39</sup> which in some way also extends to municipalities, which operate under a climate of paternalism by the state authorities.

295. In this context, the rapporteurs remind that the whole civil society, of which municipalities are an expression according to Azerbaijani legislation, operates in an environment that remains problematic as far as the full and free enjoyment of fundamental rights is concerned, as pointed out by all international actors.<sup>40</sup>

296. Some activities of the Ombudsman impact on the work of municipalities. The Ombudsman institution covers central, local and regional authorities and deals with complaints coming from individuals (including non-citizens) and organized groups. According to information provided by the Ombudsman office, in 2019 the institution has received 151 complaints regarding municipalities, mostly on social-economic issues and especially on provision of services. No detailed information has been provided as to the outcome of the intervention of the Ombudsman. According to the Ombudsman Office, no single case of human rights violation was identified as a result of investigation of the mentioned complains.

**5. CONCLUSIONS AND RECOMMENDATIONS**

297. Some improvements could be identified in Azerbaijan as far as the role, functions and finances of municipalities as compared to the previous monitoring. These include in particular:

- the ratification of Article 10.3 of the Charter;
- the improvement of the quality and transparency of the work of municipalities, including the shift to electronic payments and rules on the merit-based selection of the staff;
- the adoption of criteria for unconditional and conditional financial aid by the state to municipalities and the change of the tax base of property tax of individuals, which has increased the municipal revenues;
- the use of the delegation of functions to municipalities for the first time in 2020;
- the increased representation of women and youth in municipal councils after the last municipal elections in 2019.

298. Overall, however, major concerns remain as to a number of factors that impair the development of local self-government 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. The main elements of concern pointed out by the report are the following:

- Municipalities in Azerbaijan are not considered state institutions which exercise public services as part of overall public administration but rather an expression of civil society;
- the distribution of powers and functions between municipalities and local executive authorities as well as their factual relations remain ill-defined and this is detrimental to the development of democratically accountable local self-government;
- the powers of municipalities not full and exclusive as required by the Charter;
- land maps indicating precise borders of municipalities are not yet available for all municipalities, giving rise to controversies;
- no separate law exists on the capital city, and Baku remains the only capital city in the Council of Europe area with no directly elected governance;
- consultation of municipalities and of their weak national associations, while taking place informally, is not an established practice and is not regulated in detail in the legislation;
- it remains a challenge for municipalities to hire qualified staff, also due to non-competitive salaries and limited personal development opportunities;
- municipal own revenues are largely insufficient to fulfil the functions entrusted to municipalities by legislation and this prevents municipalities from taking up activities in areas formally open to them;

39 European Commission for Democracy through Law (Venice Commission), Opinion on the Law on Non-governmental Organisations (public associations and funds) as amended of the Republic of Azerbaijan, adopted on 12-13 December 2014, (CDL-AD(2014)043), Paragraph 92.

40 Council of the European Union, Cooperation Implementation Report on Azerbaijan, 2020, 14189/20, SWD(2020) 365 final, p. 6-10.

- the legislation still provides that municipalities must report to parliament on their activities, which is an unnecessary and pointless duty; at the same time, a comprehensive law regulating reporting by municipalities has not yet been adopted;
- the right to judicial protection is limited and not used by municipalities; conversely, municipalities and their staff are challenged in courts for violating the rights of citizens, especially on property and land issues, although this is mostly due to the unclear division between state-owned and municipal-owned land;
- in the context of the COVID-19 pandemic, municipalities have been completely side-lined and their budget has been considerably reduced.

## **APPENDIX – Programme of the Congress monitoring meetings in Azerbaijan**

### **MONITORING OF THE APPLICATION OF THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT: AZERBAIJAN**

*23 – 25 February 2021 (remote meetings)*

#### **PROGRAMME**

##### **Congress delegation:**

##### **Rapporteurs:**

Mr Bernd VÖHRINGER

Rapporteur on local democracy  
Chamber of Local Authorities, EPP/CCE<sup>41</sup>  
Member of the Monitoring Committee of the Congress  
Oberbürgermeister, Stadt Sindelfingen  
Germany

Mr Stewart DICKSON

Rapporteur on regional democracy  
Chamber of Regions, ILDG  
Member of the Monitoring Committee of the Congress  
Member, Northern Ireland Legislative Assembly  
United Kingdom

##### **Congress secretariat:**

Ms Stéphanie POIREL

Secretary to the Monitoring Committee

##### **Expert:**

Mr Francesco PALERMO

Member of the Group of Independent Experts on the  
European Charter of Local Self-Government (Italy)

The working languages, for which interpretation is provided during the meetings, will be Azerbaijani and English.

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<sup>41</sup> EPP/CCE: European People's Party Group in the Congress  
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats  
ILDG: Independent and Liberal Democrat Group  
ECR: European Conservatives and Reformists Group  
NR: Members not belonging to a political group of the Congress

Tuesday, 23 February 2021

**MEETING WITH INDEPENDENT EXPERTS**

**Mr Samir ALIYEV**, Member of the Group of Independent Experts on the European Charter of Local Self-Government

**JOINT MEETING WITH MEMBERS OF THE NATIONAL DELEGATION OF AZERBAIJAN TO THE CONGRESS AND NATIONAL ASSOCIATIONS**

- ***National Delegation***

**Mr Anar Adil IBRAHIMOV**, Head of the delegation, Member of the Ali Majlis (Parliament) of the Nakhchivan Autonomous Republic

**Mr Tamraz TAGHIYEV**, Deputy Head of the delegation, Mayor of the Narimanov Municipality

**Mr Humbat HUSEYNOV**, Mayor of Rasulzadeh Municipality

**Ms Samira HUSEYNOVA**, Member of the Municipality of Narimanov

**Ms Yazgul RZAYEVA**, Deputy of the Parliament of the Nakhichevan Autonomous Republic

- ***National Association of City Municipalities of Azerbaijan***

**Mr Tamraz TAGHIYEV**, Chair

**Mr Tofiq HASANOV**, Executive Director

- ***National Association of Settlement Municipalities of Azerbaijan***

**Mr Humbat HUSEYNOV**, Chair

**Mr Ali AKBERLI**, Deputy Executive Director

- ***National Association of Rural Municipalities of Azerbaijan***

**Mr Ali MEHDIYEV**, Chair

**Mr Vusal PASHAYEV**, Executive Director

- ***Association of Rural Municipalities of the Nakhichevan Autonomous Republic***

**Mr Tofiq BABAYEV**, Chair

- ***Association of City Municipalities of Nakhichevan Autonomous Republic***

**Mr Nuralem IBRAHIMOV**, Chair

- ***Association of Settlement Municipalities of Nakhichevan Autonomous Republic***

**Mr Jabbar JALILOV**, Chair

**BAKU CITY**

**Mr Elgin HABIBULLAYEV**, Chief of Staff of the Baku City Executive Power

Wednesday, 24 February 2021

**THE COMMISSIONER FOR HUMAN RIGHTS (OMBUDSMAN)**

**Ms Sabina ALIYEVA**, Ombudsman

**NATIONAL ASSEMBLY (Milli Mejlis)**

**Mr Siyavush NOVRUZOV**, Chairman of the Parliamentary Committee on Regional Relations

**ACCOUNTING CHAMBER**

**Mr Nasir SADIGOV**, Chief of Staff of the Chamber of Accounts of the Republic of Azerbaijan

**Mr Azim ABASOV**, Head of the Audit Department of Economic Spheres

**Ms Nurana SAFAROVA**, Acting Head of Legal Support and Human Resources Department

**Ms Fargana ALIYEVA**, Head of Section of Department of International Cooperation and Information Technologies

**Thursday, 25 February 2021**

**MINISTRY OF JUSTICE**

**Mr Vilayat ZAHIROV**, Deputy Minister

**Mr Rahman MAMMADOV**, Head of the Center for works with Municipalities

**Mr Adil ABILOV**, Head of International Relations Department

**SARAY MUNICIPALITY**

**Mr Mehi HASANOV**, Mayor

**CONSTITUTIONAL COURT**

**Mr Ceyhun QARACAYEV**, Judge

**Mr Anar JAFAROV**, Head of Department of Reception of Citizens and Complaints

**REPUBLICAN ALTERNATIVE PARTY (REAL)**

**Mr Ilgar MAMMADOV**, Leader of the Republican Alternative Party