

Peculiarities of the constitutional-legal regulation of local self-government in Azerbaijan

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Abstract: This article contains systemic statement of the basic problems, connected with the legal regulation of the local self-government in Azerbaijan, by means of using also the comparative-historical and comparative legal methods. The article deals with the research of issues, connected with consolidation of the constitutional-legal bases of local self-government, and conduction of the critical analysis existing in this area of state and specification on the problems, which solving would lead to the improvement of municipal relations in the practice.

Key words: Local self-government; Legal regulation; The Constitution; Decentralization; Elections

1. Introduction

Firstly the consolidation of regulations about local self-government in the Constitution of Azerbaijan Republic and adoption of the numerous laws and subordinate acts on their basis laid foundation of the institutionalization of the local self-government. For the previous period the considerable success was reached not only in the area of statutory regulation of organization and activity of local self-government, but in the deed of rational execution of this activity. Together with it, the necessity of execution of corresponding legal measures is undoubted in the direction of further improvement of this democratic institute, provision of more active attraction of citizens to this process, as on the modern stage the legal modernization, about which is much spoken about in Azerbaijan, is impossible in the wide sense without implementation of the state policy on usage of the society self-organization potential. From these positions it is notable that in the activity of the state the effective measures are taken in the direction of increase of the level of citizens' social activity and expansion of possibilities in the area of their actual participation as full-fledged subjects of public and political relations.

On the other part, uninterrupted increase of the volume of regulatory legal acts, which regulate public relations in the area of organization and functioning of the local self-government, expansion of the regulatory basis is connected basically with the attempts of detection of the ways of legislative solution of problems arising in practice for the period of application of the institute of local self-government in Azerbaijan. So the improvement of quality of the regulatory legal acts in relation to this area, elimination of the gaps and shortages in them

would provide effective help on the effectiveness of local self-government as a real institute of power.

It is necessary to mark that the problem of studying the establishment and functioning of the local self-government has rich history. However, the regulatory legal issues of formation, activity and development of this institute, in particular, issues of its constitutional-legal regulation in Azerbaijan until now didn't become the object of complex study. In this study the analysis of constitutional-legal regulations and state of the range of regulatory-legal acts about local self-government in modern Azerbaijan in relation to the international law regulations is considered, and some recommendations on the improvement of regulatory legal basis of local self-government, its organizational forms and mechanisms of activity are put forward, which could have the certain meaning for understanding the theoretical and historical-legal aspects of regulatory-legal acts of organization and activity of local self-government in our country, prognostication of the perspectives of law-making activity in this area.

2. History of the problem

The formation of the local self-government in Azerbaijan has millennial history. However, the statutory-legal regulation of organization and activity of the local self-government took place in the second half of XIX century and on this basis the differentiation of authorities between state power bodies and public self-government bodies happened. In the period of Azerbaijan Democratic Republic (ADR), which existed since 1918 to 1920, the important laws were accepted (Law "On the rules of public election proceeding of city council in Azerbaijan Democratic Republic" from August 7,

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1919 (State Historical Archive of the Azerbaijan Republic, f.970, list 1, case 247, ll.1-12), Law "About territorial institutions" from September 24, 1919 (State Historical Archive of the Azerbaijan Republic, f.894, list 1, case 12, ll.69-77) and etc., in which the progressive bases of formation of the local self-government bodies were detected. Therefore, one of the most important peculiarities of the law about formation of the city councils was provision of the right to be elected in the city council members to the foreigners, living within 5 years on the territory of corresponding city and also provision of electoral rights equal with men to women. Similarly to the legislation of other civilized states, this law at consolidation of the peculiarities of conducted reforming of local self-government came out of the principle of people's power. Local authorities (in particular, municipal authorities), through their representatives, took an active part in the process of working out a number of draft laws related to their activities, discussion and adoption of these laws in the Parliament of Azerbaijan Democratic Republic (Ismayilov, 2011) Cotemporary, the legislation activities of municipal authorities were extended. With the purpose of certain special circumstances of their activities, they, along with instructions, also made various decisions of socio-economic and financial and economic nature, and adopted statutes of certain public bodies.

The reforms of local self-government, begun by Azerbaijan Democratic Republic, directed on decentralization and democratization were suspended for the Soviet period. The revolutionary committees created for the first times as a lower rank actually functioned as the local government authorities. However, as a result the authorities appeared later – councils united the functions of bodies both local government and local self-government. The constant transformation of public self-governing institutes, which function up to this period in Azerbaijan, into content of Councils, took place that promoted to the destruction of century traditions and customs.

In the first Constitution of Azerbaijan, adopted on May 1912, the peculiar place was given to the legal regulation of local government and self-government. According to the Constitution, the bodies of local authorities and governments were built on the multi-level basis (Akbarov and Salimov, 2001). The second Constitution (1927) more properly regulated the status and system of local authorities and expanded their competences. The Constitution emphasized that the issues of local meaning are the subject of introduction of the local councils.

Beginning from 30s years the complete governmentalization of the local authority took place. Up to second half of 80s years the very idea of local self-government was considered as incompatible with the form of state system (Ismayilov, 2010). The Councils were considered as a political basis of the state, principle of "combination of taking solutions with their execution" didn't allow functional differentiation of

the management system and the principle of democratic centralism – territorial. At that the self-government was understood as the coincidence of the object and subject of managerial activity (Ismayilov, 2011).

In the period of disintegration of the socialistic system in the former social states the system of local power was subjected to the certain changes. It was influenced in particular both local traditions and practice of the developed countries. Similarly to the range of countries, Azerbaijan turned out to be in the range of countries, which selected the continental system of law. However, this model was applied not completely in the pure form, but rather in hybrid form, which combined elements of the other systems of law. The legal bases of this form were provided by the Constitution of Azerbaijan Republic and other statutory-legal acts. The consideration and analysis of these regulations individually play the important meaning from the aspect of detection of originality in organization and activity of the local authority of Azerbaijan Republic.

It should be noted that in 1991-1993 in post-soviet countries, in particular, the legal measures in the Russian Federation were accepted on the direction of transformation of local Councils and local self-government authorities, with adoption of the RF Constitution in 1993 (Barkhatova, 2010) and federal law "On the general principles of local self-government organization" (Federal law "About general principles of local self-government organization in the Russian Federation", 2010), the direct development of the local self-government institute has begun. In Azerbaijan the local Councils, which legal provision was regulated by the Constitution of 1978 year (Constitution of Azerbaijan SSR of 197, 1987) and law from April 9, 1990 year (The law of USSR "About the general beginnings of the local self-government and the local economy in USSR" from April 9, 1990), still continued to exist, more likely reminding the ineffective structure, and issues, connected with application of the local self-government, to say have not been discussed yet. In this period in Azerbaijan the regional, city, and regional-city, settlement, and country executive powers dominated, which executed the functions of local power.

3. Theoretical-legal bases of constitutional regulation of local-self-government

After adoption of the Constitution of independent Azerbaijan from 1995 (Constitution of the Azerbaijan Republic, 2009), the regulation, covering all areas of social-political and social-economic life of the country, including the bases of local self-government, became the linking chain in implementation of the corresponding reforms into the life

By means of regulation of the correlation of positive and natural-legal regulations in the plane of declaration of human natural rights in the constitutional regulations and their consolidation in

the legislation the legal precondition for the development of positive law was created (Melikova, 2003).

The practice of constitutional regulation of the local self-government was applied still in the first constitutions of Europe. The Constitutions of France of 1791 and 1793 years, and also the Constitution of Belgium of 1831 played the peculiar role in solving this issue. The Constitution of German Empire of 1849 year consolidated the basic rights of German communities that basically covered the issues of electing the chiefs and representatives of the communities, issues of government over members of community and local policy under the general state control, and also publication of the communities' budget and publicity of disputes (speeches) (Stepanova, 1993).

The modern constitutions, even in the different volumes, compulsorily regulate the organization of self-government. In its turn, this is executed in dependence of the forms of territorial-political system of one or other states. In the range of states with federal state system (for example, Germany, Austria, and Brazil) the general national constitution establishes the basic principles of formation and activity of the local authorities, and regulates this institute in the full extent. At the same time, in such countries as Australia, Canada, the USA and Switzerland the subjects of federation are delegated with competence of regulation of the local self-government authorities' activity. Some scientists completely fairly mark that only the central powers of those federations can allow full non-interference in the deeds of legal regulation of local power, which possess high level of economic development and developed political culture... Oppositely the local self-government can be given for buying in more egoistic and more democratic regional elites, aspiring to unite the local authorities in own powerful mechanisms and most of all force them to do activity incompatible with the canon of democracy, in comparison with the central authorities (Cherkasov, 2001).

The practice of inclusion issues, relating to the legal regulation of the local self-government authorities, into the circle of competences of the subjects of federation is peculiar to the range of countries with Roman-German legal system, which have the federal political-territorial system. However, as opposed from above-stated examples, this issue found its embodiment in the constitutions of these countries. For example, the article 28 of the Constitution of Germany of 1949 guarantees existence and basic rights of the local self-government authorities. Here it is marked that within the limits, provided by legislation, the local self-government authorities are entitled with the right to solve the local problems independently at own risk. The public associations, which activity is also determined by the legislation, possess the same rights, which are peculiar to the local self-government authorities (Evdokimov and Startsev, 2001). In the stated example the principal meaning

has the fact that this position of the Basic Law of Germany is restricted by the constitutional regulation of the local self-government authorities on the federal level.

The regulation of the local self-government in the RF together with the federal constitution is executed and on the level of subjects of federation and covers the wide spectre of issues, connected with this institution (Balykhin and Slizovskii, 2012).

The volume of the constitutional regulation of the local self-government authorities is not similar also in the unitary countries. For example, in the section 12 "About administrative-territorial formations" of currently active Constitution of France of 1958 year the bases of legal status of the local authorities were reflected. According to the article 72, the territorial collectives of Republic are recognized as the practical constituent of the basis of local self-government authorities' organization on the territory of France, communes, departments (administrative-territorial division of France) and foreign territories (Evdokimov and Startsev, 2001).

In the constitutions of the majority of states with unitary political-territorial system (Spain, Italy, Netherlands and Japan) the rule of formation of the local self-government authorities and their activity are provided in the corresponding sections and chapters. The institute of local self-government found its reflection and its mechanism of regulation almost in all Constitutions of post-Soviet countries.

The proper regulation of the local self-government institute in the constitutions of the majority of democratic states must not be accepted as an attempt of limitation of the local self-government rights. The realization and consecutive implementation of this institute true purpose completely depends on the policy conducted by the states authorities. The freedom at choosing one or other position is limited by the current legislation, and also democratic traditions and force of the public opinion. In the other words, the local self-government authorities possess the degree of independence in solution of the local issues, which is equal to the degree of democratization of the very central authority.

The relations in the area of realization of municipalities' activity appear as a result of public-territorial self-organization of the society and are connected with the necessity of independent solution of the range of issues on the part of population by means of public-political and other methods. In this case the point is about constitutional significance of the sufficiently wide circle of relations, covering the area of local self-government. In addition, the municipal relations are closely connected with realization of the public-political power on the one part, and on the other part with self-realization of the individuals and implementation of the rights and freedoms within the territorial boundaries (State Historical Archive of the Azerbaijan Republic, 45). It is necessary to mark that in some studies the special attention is emphasized on the present substantial differences,

and frequent discussions in relation to the key problems of constitutional models of local self-government (Babichev and Smirnov 2011).

For the local self-government the role of Constitutions as the basic law is not limited by only consolidation of the corresponding branch regulations, including those, which bear municipal-legal character of regulations. It is important that Constitution serves as a certain measure, criterion of conformity of the system of institutes and regulations of local self-government to high values, subjected generally on the constitutional level. The constitutional regulation must be compulsorily observed by the state power and local self-government, including their officials (Ismayilov 2011, 339). The article 147 of the Constitution of Azerbaijan Republic declares that the Constitution of Azerbaijan Republic, possessing the high legal force and making the basis of the system of country legislation, and has direct legal force (Constitution of the Azerbaijan Republic, 2009, 78). On this basis, in case of appearance of contradictions between constitutional regulations and other laws, the courts are invested with authorities of direct application of the Constitution.

4. The comparative analysis of domestic constitutional-legal regulations and corresponding principles of the European Charter of local self-government

The regulations of AR Constitution of 1995 year, provided in section IV of chapter IX, devoted to the local self-government, were created within the frameworks of public theory of local self-government. Thus, the Constitution deduced the value of local self-government authorities beyond the frameworks of limited pragmatic approach to determination of this institute as a system of local power, which provides the rational government over cities and villages. The constitutional guaranties, provided by the local self-government authorities, in particular provision of independence of local self-government from the state power authorities, serve incontrovertible evidence, and on this ground the civil initiative is formed and the public consent is achieved.

Also it is necessary to notice that in the Constitution of AR there are certain regulations, which fasten the issues, directly or indirectly connected with the local self-government authorities. Indirect constitutional regulations were briefly and clearly stated in the articles 142-146 and 150 of the Constitution that fastens the execution of local self-government by the municipalities, formation of local self-government on the sample basis, organization of the local self-government, their authorities, provision of their independence, and rules of decision-taking on the part of local self-government authorities. Directly these issues, connected with local self-government, found its reflection in many articles of the Constitution.

The constitutional regulations, relating to the local self-government, and also the regulations of the law of Azerbaijan Republic "About the status of municipalities" (The Law of Azerbaijan Republic "About the status of municipalities", 1999), although coincide with the requirements of principles of the European Charter of local self-government" (European charter of local self-government, 1990) from October 15, 1985 and Declaration of Interparliamentary Assembly of the CIS member-countries "About principles of the local self-government of member-countries of the Union" (International humanitarian right in the documents, 1996, 541-552), accepted in 1994 year and other regulatory-legal acts, but there the range of unsolved issues still remain. Thus, in the art. 2 of the European Charter of local self-government (ECLS), the principles of local self-government from the aspect of appropriateness, must be alternatively recognized either constitution, or in the legislation of the countries. These principles, bearing generally the character of external status, include the independence of the local self-government authorities, the right of judiciary protection of the legal rights and interests of the local self-government authorities, the right of creation of associations and unions by the municipal structures, the right of state authorities to delegate their authorities to the local self-government authorities, accompanied with the provision of necessary funds, and the right of execution of control over the legality and appropriateness of their execution, the right of the state control over execution of authorities of the local self-government bodies and etc., and this is concordant with the general principles of law.

If we pay attention to the meaning of above-mentioned principles, we'll be able in one or other extent to find their absolute appearance in the provisions of the Constitution of Azerbaijan. In the art. 4.2. of ECLS it is marked that local self-government authorities possess the considerable degree of independence in the issues of realization of their authorities, determination of the order of these authorities, and in the choice of necessary funds with the aim of execution of their functions. This supposes the execution of the activity by the local self-government bodies without interference of the state. The solution, accepted by the local self-government authorities, doesn't require both confirmation on the part of state, but even their previous agreement.

The independence of municipalities' authorities, which execute the local self-government, is reflected in the part 1 of article 146 of the Constitution of Azerbaijan Republic. According to this provision, municipalities possess independence at execution of own authorities. Together with it, the independence at execution of own authorities doesn't exclude responsibility of the municipalities before the citizens, residing on their territory.

In accordance with art. 6.1 ECLS, in which the structural-organizational guaranties of local self-government are reflected, the local self-government authorities must possess the possibility of direct

determination of their internal administrative structure. Thereat, two important rules have to be adhered to, specifically: administrative entities have to meet local requirements and have to ensure rational governance. At the same time, the internal structure of the local governance authorities has to conform to the provisions of other legal acts. The possibility of an independent determination of the internal structure of local authorities is rests upon important provisions of the country's legislation.

Although in the Constitution of AR there is no direct prescription, connected with solution of the external organizational-structural issues, but it provides special provision, which consolidate the procedure of internal structure determination. According to art. 143 of the Constitution of AR, municipalities execute their activity by means of meeting, constant and other committees.

The art.7. ECLS set the regulation, which prohibits the usage of financial means with the aim of effect on the policy of low-income of local self-government authorities' policy. The subsidies, represented by the local self-government authorities, must not be earlier beforehand with the aim of financing of the concrete programmes. This means that allocation of subsidies must not be crossed with independence of authorities of local self-government bodies – principle of the freedom of local policy selection that enters into the circle of authorities of the local self-government bodies. In the art. 9 of ECLS, which establishes the financial-economic guarantees of local self-government, the entitlement of local self-government authorities with the right of possession of sufficient financial funds, which they can freely dispose at execution of their functions, is provided. However, this provision of the Charter is accompanied by the corresponding note about that possession of such possessions by the local self-government authorities is possible only within the frameworks of general national economic policy.

Free formation of the revenue part of local budget includes meeting additional requirements. Such provisions protecting local authorities from excessive expansion of their powers in the field of budget include the formation of a part of financial resources on the account of local taxes and duties, the ability of local authorities to independently set the rates of local and duties within the limits stipulated by law.

In the Constitution of AR the basic principles of financial and property independence of the local self-government authorities are reflected. Thus, according to the art. 144 of the Constitution of AR the circle of authorities, independently executed by the local self-government authorities, includes the establishment of local taxes and duties, approval of the local budget and reports about its execution, adoption and execution of the programmes of local economic development, possession, usage and disposal of the municipal property and etc. Together with it, the tax and property rights of the local self-government authorities were properly and carefully regulated on the part of state that makes disputes

about any "natural" rights of municipalities inappropriate. Thus, the local taxes are determined by the Republican legislation, and all elements of tax obligations are specified in the same place, and those types of taxes, which are enlisted in the Tax Code of AR, are related to the authorities of the local self-government bodies (The Legal Code of Azerbaijan Republic, 2009). This means that the law provides the necessity of determination of the upper and lower marginal rates of these taxes, and the concrete rates are determined by the very municipality in dependence on the local conditions (art. 7 of Law "About bases of financing municipalities" from December 7, 1999) (The Code of laws of Azerbaijan Republic, 1999). The commented article must not be interpreted in such a way that municipalities are also entitled to implement own taxes. Thus, referring to the art. 73 of the Constitution, also relating to the municipalities, it is possible to make a conclusion that the taxes are established only by the law. What concerns the local taxes, mentioned in the Constitution, it is necessary to note that the specifications of their content by the Law of AR "About local (municipal) taxes and payments" from December 27, 2001 (The Code of Laws of Azerbaijan Republic, 2002), cut the establishment of such payments on the part of municipalities neither in "independent", no in any other form.

The art. 11 of ECLS, in which the right of local self-government authorities is reflected on the judicial protection of own legal rights and interests, reflects the requirements for this right establishment. The judicial protection is understood as the right of local self-government authorities to appeal into the judicial bodies, formed in conformity with the procedural rules, or into the other bodies, authorized to consider the complaints of local self-government authorities. Such solutions can be accepted in the form of solutions, which execution is compulsory, and in the form of recommendations. The art. 146.5 of the Constitution of AR establishes the guarantees of the municipalities' activity. According to this provision, the judicial protection of municipalities and indemnification of the additional expenses, arising as a result of solutions of the state authorities is guaranteed. This regulation, together with the other parts of the art. 146, is considered to be important constitutional guarantee and its provision is the constitutional liability of the state and its bodies.

At the same time, it should be noted that according to the articles 146 and 60 of the Constitution of AR about judiciary guarantee of the rights and interests, the subjects of judicial protection are both citizens and municipalities. However, in accordance with the art. 142 the execution of local self-government by the municipalities and absence of any prescriptions in relation to the citizens' rights concerning the local power, makes the conversation about the judicial protection of the citizens' municipal rights inappropriate. In that way, although the special – Second – Section of the Constitution of AR, where

basic rights of human and citizen are set forth, and the following is stipulated: the rights of citizens to participate in the political life of the society and the state (Art. 54), to govern the state (Art. 55), the right to elect and to be elected to public authorities as well as to participate in referendums (Art. 56), the right to refer to, to address individual and collective written submissions to public authorities, the right to criticize the activities and the work of public authorities and their officers, of political parties, professional unions and other public unions, as well as of individual citizens (Art. 57), nevertheless, in respect of local self-governance the presence or absence of one right or another pertaining to the mentioned above issues remained without attention. Videlicet, in spite that generally the municipalities, executing the local self-government and representing the local authority express the common interests of the local population, residing on their territory, nevertheless, entering into the area of legal relations, are considered the subjects of rights, and in other words, accept the peculiar form and thus are in the position, separate from the interests of other subjects. The visual example of it is most clearly seen in the legal provision of municipal property. Namely this is the reason why on the next stage of reforms of the local self-government, which presently are conducted in Azerbaijan, but have not been finished yet, it is necessary to conduct specifications, connected with rights of citizens in relation to the local self-government, and make efforts for consolidation of this issue on the constitutional level.

Art. 10 of the European Charter the right of creation of associations by local authorities is set forth. No relevant regulation was provided for in the Constitution of AR. However, such right of local governance authorities is recognized pursuant to Art. 151 of the Constitution which stipulates direct application of international enactments. Pursuant to Part 2 Art. 10 of the European Charter, local authorities may unite for addressing common issues and for protection of common interests. In the European Union member states, the associations of local authorities possess important and rational means of influence over decisions adopted on a nation-wide or regional level. The activities of such associations are limited by the frames of legislation of a given country. In practice of such countries, the associations of local authorities play an important role in mutual cooperation with public authorities. In particular, numerous procedures of joint action were developed, aimed at rational protection of local authorities' rights and creation of provisions for extrajudicial resolution of disagreements occurring between local authorities and bodies of public power. The associations, in participation in the legislative activity, play an incontestable role in the improvement thereof, coordinate the methodical and educating activities, and carry out other kinds of practical activities. In a number of European countries, huge scientific and methodical centers were established on the account of financial funds of municipality associations. The AR Constitution, if not

directly, then indirectly recognizes the possibility of creation of municipality associations, and moreover, in the republican municipality legislation the creation of regional association of municipalities was provided for, which was the impulse for the development and formation of such kind of institutions in Azerbaijan.

The right of the state authorities on delegation of the state authorities by the local self-government body at provision of the necessary funds and right for the execution of control over legality and appropriateness of execution of authorities found its reflection in p. 4 of the art. 5 of ECLS. The corresponding principle was provided in p. 2 of the art. 144 of the Constitution of AR. Moreover, as opposed to the Charter that supposes only delegation of authorities, the Constitution of AR consolidates the transference of these authorities. Let's mark that we understand delegation of authorities as the transference of the right of solving the tasks, which enter into the circle of competence of the state authorities, and local self-government authorities on the term or termless basis. Understanding of the transference of competences covers the process of exclusion of the state bodies' authorities and their inclusion into the list of authorities of the local self-government bodies. However, in the second case the notion "public powers" in fact changes because pursuant to the relevant law "on delegation", such powers fall within the scope of powers of local authorities, which, in turn, reveals the incomplete reflection of the essence of the provision which covers the term "delegation" in the mentioned above interpretation. Otherwise, there would be no need to allocate sufficient financial funds for exercise of such powers, including in the course of supervision by the bodies of the legislative and executive powers over the implementation of "state powers" (Ismayilov, 2011).

While the interpretation of the European Charter of Local Self-Government, the delegation of powers is viewed as the process of the possibility of combining the resolution of local issues between the bodies of state power and local authorities. In this international enactment it is noted that in delegation of powers it is important that local authorities, acting from the positions of local needs, adhere, to the possible extent, to the conditions of bringing such powers in line with local conditions. Moreover, this document stipulates the requirement of the necessity of timely and duly consultations with local authorities in the process of planning of an issue or another which directly concerns such authorities, and in decision making.

In the Constitution of AR the term "additional authorities" is used. This means that the volume of transferred state authorities must be determined in accordance with the volume of municipalities' authorities. That means that the scope of delegated state powers should be determined in accordance with the scope of powers of the municipalities. Because an enormous scope of such powers may have a negative impact on the efficiency of local

authorities. Together with the transference of state authorities, the obligation of separation of the necessary financial funds predetermine the right of state authorities on the execution of control over realization of these authorities, and this rule found its reflection in p. 2 of the art. 144 of the Constitution of AR.

The principle, which reflects the right of state authorities on the execution of the control over the activity of local self-government authorities, is covered by the content of articles 3 and 8 of ECLS. Pursuant to the contents of Art. 3 of the Charter, the activities of local authorities are strictly limited by the legislation framework. Public authorities, by means of law, influence the activities of local authorities, and the prerogative power to verify the lawfulness of decisions adopted by local authorities lies with state power embodied by its relevant entities. And pursuant to the requirement of Art. 8, any administrative supervision over the activities of local authorities may be carried out in the cases and under the procedure stipulated in the Constitution and laws. The aim of this control is pursuing the observation of the constitutional principles and legality on the whole. This principle also includes the supervision over the expediency of the activities of local authorities in respect of the issues the performance of which is entrusted to them by superior authorities. At the same time, the exercise of one kind of supervision or another is deemed acceptable if the balance between the degree of interference of a supervising body and the importance of the interests it intends to protect is observed. The essence of the prescript of the European Charter pertaining to the possibility to conduct supervision over the activities of local authorities in the process of exercise of its powers is that public authorities are entitled to exercise all of the functions of a supervising body, from the request of prior notification connected with the decisions adopted by local authorities to reversal of decisions adopted by such authorities due to inexpediency thereof.

P. 3 of the art. 146 of the Constitution of AR consolidates the right of the state on execution of the control over the municipalities' activity. In Azerbaijan directly on the constitutional level the several forms of control over observance of the legality of local self-government authorities were determined, one of which is the judicial control. In accordance with the Constitution of AR, the acts, accepted by municipalities, must be based on the right and justice (equal relation to the equal interests) and must not contradict to the Constitution, laws and subordinate acts of Azerbaijan Republic. The conformity of these acts to the enlisted acts is considered and settled by the Constitutional Court of AR on the basis of request into the corresponding bodies. At the same time, if a person believes that his rights and freedoms, stipulated in and guaranteed by the Constitution of AR and other laws, are violated by a regulatory act which is effective for the person, and is duly adopted

and published by a local authority, such person is entitled to, under the procedure relevant for disputes in respect of lawfulness of regulations, to refer to court with a petition to recognize such act or a part thereof contrary to law.

In the conformity with the requirement of the art. 133 of the Constitution of AR the prosecution agencies perform the important function on execution of the observance in the cases and order, provided by the legislation.

Together with it, the control over solutions, accepted by the municipalities, is provided by the legislative and executive authorities. Thus, in accordance with p. 4 of the art. 146 of the Constitution of AR, the municipalities represent the report about the activity of Millie Medzhlis of the Republic of Azerbaijan in case and order, specified by the legislation. Also the control over the activity of the local self-government authorities is executed by the different governmental authorities having administrative and supervising functions: the Ministry of Justice, the Ministry of Finance, the Ministry of Interior, ministries dealing with collecting taxes, environment protection, urban development, and other issues, and also the local executive authorities' bodies. These structures execute such activity in the area of provision of the state standards in the corresponding areas of local self-government authorities' activity. Together with it, a big quantity of controlling bodies can negatively effect on the effectiveness of local self-government work authorities.

Alongside with the external principles, there also exist internal principles of organization and functioning of the local self-government bodies that in its turn find its reflection in the European Charter and Constitution of AR. They can include formation of the members and officials of local self-government authorities on the election basis, obligation of the representative body of the local self-government, the right of creation of subordinate executive authorities, subordination of the local self-government authorities before population, participation of the population in the process of control over preparation of solution of the local self-government, their discussion, adoption and execution, publicity and legality of the local self-government activity and their officials, agreement of the state and local interests in their activity and etc. The principle of formation of members and officers of local authorities on the basis of elections is an important principle in formation and activities of public power, in establishment of a democratic system. The ECLS Preamble contains the requirement of application of democratic procedures when forming local authorities, and Clause 2 of Article 3 contains the direction of the right of exercise by these entities of their powers through councils and meetings participated by members elected on the basis of free, secret, equal, direct and general voting. Article 55 of the AR Constitution stipulates the right of citizens of the Republic Azerbaijan to participate in state governance directly

or through their representatives. In Article 142 of the Constitution it is set forth that municipalities exercising local self-governance in Azerbaijan are formed on the basis of elections, and it is provided that the grounds of formation of such entities are stipulated in a special law in compliance with the provisions of the Constitution.

The obligatoriness of representative self-governance bodies and the principle expressed in their right to create executive bodies accountable to them include the necessity of operation of a council or of a meeting entitled to govern local public affairs on behalf of local people, that is, of a special representative body, the members of which are formed on the basis of free, direct, secret, equal and general voting. The possession of the full power in addressing local issues by the representative body of local self-governance, that is, the arrangement of predominance (priority) of a representative body, is concretized in the ECLS provision of the right of representative bodies – councils or meetings – to form executive bodies answerable to them. In the Constitution of AR the municipalities which are entrusted to carry out local self-governance, function themselves as an elected representative institution, and pursuant to Article 143 of the Constitution a municipality carries out its activities through meetings, permanent and other commissions. It is stipulated that meetings of municipality are convoked by the chair of municipality. Along with that, relevant laws and statutes of municipalities clearly stipulate the structure of municipalities.

The principle of accountability of local self-governance bodies to people is interrelated with the principles of their electiveness and competent self-dependence. The electiveness and competent self-dependence of the members and officers of municipalities expresses, first and foremost, observance and assurance of peoples' interests when local authorities make decisions in their activities. It's no coincidence that Part 1 of the Article 146 of the Constitution of AR, in spite of exercise of their powers by municipalities, the issue of their responsibility before people living in a given territory is brought to the forefront. The principle of accountability includes the obligation of municipalities to inform the electorate and people of their activities, as well as to provide full and reliable reports connected with results of such activities. The following is considered to be main procedures for ensuring responsibility of local authority before people: periodic elections, meetings of people, opinion polls, etc.

The right of citizens to participate in the management of state affairs, as one of the important democratic principles, holds a high position among the goals of local self-governance set forth in the ECLS Preamble. Such right may be exercised immediately on the local level, directly or through representatives elected by people. This issue is stipulated in Part 1 of Article 55 of the AR Constitution. Pursuant to this provision, the principle of peoples' participation in the process of

supervision over the preparation, discussion, adoption, execution and implementation of the decisions of local self-governance, as the obligation of local authorities, includes the creation of conditions providing for maximum degree of direct participation of people in governance. Local self-government, being the closest and the most available institution for people, is aimed at the creation of conditions providing for enforcement of such citizens' right. Among the measures for the creation of such conditions are publicity and socialization of the activities of local authorities, the obligatoriness of regular and complete provision of the available information on their activities to the people, the possibility of direct participation of representatives of the people and of public and political organizations in the meetings of municipalities, etc. Direct or indirect official concretization of all these issues may be found, along with the above-mentioned provision of the AR Constitution, in Part 1 of Article 50, Part 1 of Article 56, Article 57, Part 2 of Article 142, and in Part 1 of Article 146. Observance of the principle of publicity in the activities of local authorities is deemed an essential prerequisite for assuring the participation of the people of a certain territory in the process of supervision over the preparation, discussion, adoption, execution and implementation of the decision by the above-mentioned entities.

The principle of legality in the activities of local authorities and their officials is expressed in the very notion of self-governance which is set forth in the Article 3 of the ECLS. The activities of local power are lawful which allows to speak about this orderliness of power as of an institution conforming to nation-wide interests, which fact is legally confirmed in laws. It is by the adoption of law the way how the consensus of public interests of different political forces and nation-wide interests is obtained. That is why an important element of the stability of the entire system of local self-governance resides in exercising their activities strictly within the limits stipulated by law. At the same time, both public authorities and local authorities have to be bind by law not just in abstract form; the application of laws by authorities, as well as their significance and content have to be compatible with the rights and freedoms of human and citizen, as in the Article 12 of the AR Constitution it is set forth that the primary goal of the state is to ensure rights and freedoms of human and citizen, a decent standard of living for citizens.

Combining local and nation-wide interests in the activities of municipalities and their officials is deemed one of the important principles setting the margins and limits of priorities of activities of such entities representing local public power. This principle is in harmony with the principles of the competent independence of local authorities, of state supervision over their activities, as well as of state supervision over the expediency of local authorities' activities within the frames of exercising the state powers subject to delegation to municipalities. The

principle of combining local and state interests compels local authorities to take into account state interests in the course of political decision-making within the limits stipulated by law. The ECLS stipulates that local authorities have to not only carry out their activities on legal grounds, but also to take into account a number of issues, including the priorities of national economic policy (Part 1 of Article 9). A more clear stipulation of this principle is contained in Part 2 of Article 146 of the AR Constitution.

Of course, constitutional principles and guarantees of local self-governance are of exceptional importance. If this "exceptional importance" includes the necessity of strict observance by local authorities of relevant principles, of the expression in real content of the ideas of the Constitution in the legislation, in adoption of ideology in respect of local self-governance the foundation for which is laid in the Constitution, as the core of the policy actually conducted by the state, then the correctness of such approach becomes most clear. It is no coincidence that some researchers deem the constitutional and law coercion the main "instrumental component" of the mechanism for ensuring the lawfulness of the activities of local authorities and their officials (Davydova, 2011). At the same time, it is improper to abandon to dogmatism and to excessively exaggerate the role of the constitutional provisions related to local self-governance. The impact of constitutional provisions on the social reality can become real only in the case if the laws arrange efficient mechanisms thereof, if public officials, on the will of which the taken position and the policy conducted in respect of local self-governance are dependent, do not seek for the ways to exceed the bounds of the above-mentioned provision, to demonstratively ignore constitutional instructions, but try to find the methods of implementation thereof.

It would also be somewhat naive to believe that the recognition of self-governance at the Constitutional level is confined to the notion of ensuring municipal democracy at a sufficient level. For example, Together with all this, the Constitution of AR of 1995 doesn't recognize the local self-government as a form of people's power existence, and doesn't separate it as an independent branch of power, and doesn't accept it as one of the bases of the constitutional system. The Constitution directly doesn't establish what exactly it is necessary to consider to be local self-government, and doesn't specifies forms of execution of local self-government, and doesn't give guarantee of "filling" the true content of the notion "issues of local value".

However, despite that, in such Constitutional provisions, as that the only source of power are people (Art. 1), that the people have a sovereign right to determine their own destiny and to establish their form of governance (Art. 2), as well as in other provisions set forth in the Constitution and in other regulations, directly or indirectly related to local self-governance, a legislator has sufficient positive

"material" using which the legislative lacunas may be eliminated.

Basing on this positive "material" available in the Constitution, as well as on relevant provisions of international legal acts related to local self-governance, it is necessary to commence the work form a comprehensive review of all of the range of effective regulations as well as from the concurrent monitoring in the field of law enforcement and revelation of the degree of development and of the quality of social relations in municipalities. According to the results of the analysis, it is possible to eliminate obsolete laws, to conciliate contradictions, to set the most important fields of local political and legal life requiring legal regulation.

One of the important issues also is the application of a monitoring or supervision system over the state and efficiency of law enforcement activities because, as O. Rybakov puts it, "without the support of a robust policy in the field of law enforcement, even the most correct, fair and deliberate decisions in the law-making field will remain implemented incompletely" (Rybakov, 2003). Legal monitoring is characterized in the juridical literature as a way for rationalization of legislation, for elimination of lacunas and contradictions present therein (Tikhomirova and Gorokhova, 2009), and socio-legislative monitoring is characterized as a more complex, comprehensive process of study of the state not only of law, but also of public opinion related to law (Salomatin, 2012). The information acquired by public authorities within these frames of monitoring should be systematized and used for determining concrete needs in improvement of the system of legal acts.

5. Conclusion

The local self-government acts within the authorities, determined by the Constitution and laws of the country, which can be expanded or limited by the state. On the other part, the determination of the local self-government principles on the constitutional level serve as the means of limitation of state authorities' activity in this area; the change of these provisions is impossible without making the corresponding amendments into the Constitution that according to the articles 3 and 152 can be conducted only in the order of referendum. Together with it, we consider it necessary to improve and develop the current statutory-legal basis of the local self-government on the basis of corresponding principles of the European Charter and Constitution of our country, which success in many respects depends on accounting both by the legislator, and representatives of the corresponding bodies of state authority, such important aspects as historical experience of the local self-government, originality of local conditions, and the level of legal culture of population.

For the effectiveness of the current legislation, first of all, it is necessary to provide the conformity in full extent of the Republican legislation in the area

of local self-government and also the local level acts. So for strengthening of the beginnings the local self-government of the native model, it is appropriate to make amendments into the current legislation with taking into account the practice of application of the legal acts, and detection of the coefficient of their usefulness or uselessness.

At the present stage, the need for continuing reforms aimed at institutionalization of local government has emerged. In this context, as we think, it would be more expedient to first discontinue the institution of local executive government and to preserve only municipalities carrying out self-governance activities at the lower stage of a local administrative territorial entity. This step, along with reconciling discrepancies and overlap of responsibilities, would create the conditions for a more prompt meeting the demands of local people and would prevent the cases of transfer of responsibilities from one body to another due to negative facts. Therewith, measures of organizational and legal and socio-economic nature should be taken for proper performing their functions by local authorities who fully conform with their nature, as well as for the ability to perform a range of state functions which will be entrusted to them by law. Such measures should include, along with rendering legal assistance to the people of municipal territory, granting legal independence, that is, creation of favorable mechanisms for the ability for real exercise of their rights in addressing all the issues of social and economic nature. From this point of view, it is deemed expedient to adopt following legal acts: on bringing up for discussion by local communities of the drafts of the most significant laws in the sphere of local self-governance; on the procedure and the condition of accountability of municipalities to people and the state; on the procedure of exercise of local governance rights by local people; on the interaction between local authorities and public authorities; on the procedure of early termination of the authorities of municipalities' elected persons (introduction of the "recall" institution); on delegation of additional (state) powers to municipalities; on the procedure of external communications by municipalities; on legal foundations of the organization and activities of self-governance in large towns; on municipal law-making; on the procedure of putting forward law-making initiatives at the local level by people, etc.

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