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## LOCAL SELF-GOVERNMENT IN THE REPUBLIC OF AZERBAIJAN: PROBLEMS OF THE ADMINISTRATIVE SUPERVISION

**Summary.** The aim of the article is to argue that the adoption of the Draft Law of Azerbaijan Republic “On Municipality Report” will have a lot of positive effects on the national municipal law and will allow further democratic developments.

Local self-government plays a big role in every state. One of the most important principles of constitutionalism is the principle of decentralization of public power. It is very important for the Republic of Azerbaijan. For a long time, local self-government in the country was formal – while it was the subject of the federation of the Union of Soviet Socialist Republics. And still, there are municipal reforms to overcome this historical legacy in the local self-government development. A lot of attention is paid to the municipal elections – how to make them more transparent, how to raise the citizens’ interest in them, so they would take an active part in all of the stages of the electoral process. A lot of attention is paid to the fact, that local self-government bodies play a big role in human rights guaranteeing, especially when it comes to social rights. All of these questions require attention, and the findings of the Republic of Azerbaijan might be useful for other post-Soviet countries with the same historical experience.

The municipalities are the second level of public power in the Republic of Azerbaijan. The municipal power is a rather new type of power for the national society and state, as it was introduced after independence was proclaimed. The national municipal law still has a lot of gaps. One such gap involves the absence of the well-balanced concept of the administrative supervision of local authorities’ activities, especially when it comes to powers, delegated to the bodies of local self-government. This gap can be overcome by the adoption of the Draft Law of Azerbaijan Republic “On Municipality Report”, that is laconic but essential for the further development of the local self-government according to European standards. It will also have other positive effects – for example, it will improve the situation with the protection of social rights at the local level.

**Key words:** municipal self-regulation, territorial community, municipal government, social state, social rights, European municipal standards, administrative supervision.

**The introduction.** Local self-government plays a big role in every state. One of the most important principles of constitutionalism is the principle of decentralization of public power. It is very important for the Republic of Azerbaijan. For a long time, local self-government in the country was formal – while it was the subject of the federation of the Union of Soviet Socialist Republics. And still, there are municipal reforms to overcome this historical legacy in the local self-government development. A lot of attention is paid to the municipal elections – how to make them more transparent, how to raise the citizens’ interest to them, so they would take an active

part in all of the stages of the electoral process. A lot of attention is paid to the fact, that local self-government bodies play a big role in human rights guaranteeing, especially when it comes to social rights. All of these questions require attention, and the findings of the Republic of Azerbaijan might be useful for other post-Soviet countries with the same historical experience – like Ukraine.

**The literature reviews.** Local self-government in Azerbaijan isn’t a very popular topic in the foreign (for Azerbaijan) professional literature. Though, when it comes to peer-reviewed journals, one should pay attention to the publications of the national scientists (see [1 – 4]) and to the foreign ones (see [5 – 6]). Also, the textbooks on the constitutional law of foreign countries popularize the information about the local self-government in the Republic of Azerbaijan (see, for example, [7]). But still, not a lot of authors analyze the national municipal problems. The article is an attempt to overcome this drawback. It is essential, because the doctrinal discussion can contribute (and definitely will) the further development of the local self-government in the Republic of Azerbaijan.

**The aim of the article** is to argue that the adoption of the Draft Law of Azerbaijan Republic “On Municipality Report” will have a lot of positive effects on the national municipal law and will allow further democratic developments.

**The main text.** The Constitution of the Republic of Azerbaijan 1995 proclaims, that “The people of Azerbaijan shall include citizens of the Republic of Azerbaijan living within and beyond the territory of the Republic of Azerbaijan” (Article 1) and that “the people of Azerbaijan shall exercise their sovereign right directly by nationwide popular vote – referendum, and through their representatives elected on the basis of universal, equal and direct suffrage by free, secret and personal ballot” (Article 2 (II)). Also, according to the Basic Law, “the State of Azerbaijan shall be a democratic, secular and unitary republic based on the Rule of Law”. All of that gives the legal basis for the formation of the local self-government in the country.

During the Soviet times, local self-government was declarative and formal. Local councils and their executive bodies were considered to be the elements of the “vertical” of the state authorities. Thus, the local self-government, that would be separated from the state power, didn’t exist until the independence of state of Azerbaijan was proclaimed.

According to Article 142 of the Constitution of the Republic of Azerbaijan, “local self-government shall be exercised by the municipalities. Municipalities shall be formed on the basis of elections”. Most of the material and procedural provisions of municipal elections are covered by the Electoral Code of the Republic of Azerbaijan.

So, municipalities in Azerbaijan are the representative collegial bodies of local self-government. Elected for the first time in 1999, now municipalities exercise public power at the local level.

The main purpose of the municipalities' functioning is to solve the social issues of the territorial community. Therefore, municipalities are considered to be the bodies of the public power with the wide competence, – for example, they are empowered to collect taxes at the local level. Collected taxes should be spent on improving the territory of municipalities, building roads, and providing the social needs of people.

If the state bodies exist at the local level, why do the territorial communities need the municipalities? A municipality is a body of local self-government that enables citizens (as a part of a territorial community) to independently and freely solve locally important issues in a certain administrative territorial unit. The authority of the municipality includes local social protection and social development issues, local economic development issues and local environmental issues.

As the municipalities are elected by the territorial community, they have to report to it. According to the legal provisions, municipalities should report on their activities at least every 6 months. Also, they have to meet with members of the territorial communities regularly, find out their needs and try to solve the local problems.

Most of the times municipalities report about their activity within their own competence. Less often they act as the representatives of the state bodies within their delegated powers.

The delegation of state bodies' powers to the local self-government bodies corresponds to such a principle of European constitutionalism as the principle of subsidiarity, and contributes to the decentralization of public power in the state.

Contemporary constitutional doctrine underlines, that the delegation of powers to municipal bodies is carried out in one direction – from the state bodies to the municipal bodies. Such delegation should be accompanied by the transfer of relevant financial, material and other resources. The state bodies are allowed to supervise the relevant municipality's activity. Such delegation and such supervision should not affect the nature of local self-government.

So, local self-government in the Republic of Azerbaijan is a system of organizing the activities of citizens (as a part of a territorial community), that provides them with the opportunity to exercise their political right to independently and freely resolve issues of local importance and carry out part of state affairs – regarding the interests of the territorial community.

The foundations of the constitutional system in Azerbaijan include two levels of public power. The first one is the state one, and the second – the local self-government bodies. Both of these levels have the essential material resources to carry out their activity. According to the provisions of the national legislation, state and municipal property is divided, including the land. Within the framework of their territorial collectives, municipalities carry out administrative activities.

According to Article 144 of the Constitution 1995, the following issues shall be decided at the meetings of municipalities: “recognition of the authority of municipality members, and loss and termination of their authority in cases provided by law; approval of the rules of procedure of the municipality; the election of the chairman and deputy chairman of the municipality, and the election of its

standing and other commissions; the fixing of local taxes and duties; approval of the local budget and reports on the implementation thereof; possession of municipal property, and the use and disposal thereof; adoption and implementation of local social security and social development programs; adoption and implementation of local economic development programs; adoption and implementation of local ecological programs”. This list is detailed in the national municipal legislation.

Today, one can argue, that municipalities are well-functioning administrative bodies with important tasks. However, it should be taken into account, that the power of self-government is the activity of public associations, and it is not a part of state administration by its nature. Municipalities as the bodies of local self-government are elected for 5 years and are not accountable to state bodies. However, the registration and coordination of municipalities is carried out through the Ministry of Justice.

One of the current problems at the local level is that municipalities are not accountable to any authority.

The state entrusts certain powers to municipalities, and funds are allocated from the state budget for the implementation of these powers. Therefore, the state should exercise its supervision in this area. The state guarantees local self-government bodies judicial protection, recovery of additional costs associated with the execution of decisions of executive authorities.

In order to prevent negative situations in the activities of municipalities, their activities are monitored. When one says “supervision over the activities of municipalities”, it means two legal provisions.

The first can be found in the Article 144 (II) of the Basic law. It creates constitutional grounds for the delegation of powers from the state bodies to the municipalities, and underlines, that the relevant state bodies should supervise the exercise of such powers (administrative supervision). The cited paragraph of the Constitution 1995 points out, that the delegation of powers should be accompanied by the transfer of the necessary resources. It means, that in case, these resources are financial, the financial supervision should be performed along with the administrative supervision.

The second provision was included in the national legislation according to the European Charter on Local Self-Government (Article 8), ratified by the Republic of Azerbaijan. Municipalities, municipal bodies and their officials comply with the Constitution and laws of the Republic of Azerbaijan. The state has the possibility to exercise administrative supervision over such a compliance. This supervision is exercised by the Ministry of Justice's Center for Work with Municipalities. At the end of each year, this body submits an annual report on its activities to the Milli Majlis.

Municipalities are independent in the exercise of their powers, which does not exclude their liability to the territorial community. After the constitutional reforms in 2009, a clause was included in Article 146 of the Constitution. This clause determines, that “municipalities shall submit reports about their activities to the Milli Majlis of the Republic of Azerbaijan in cases and in the manner prescribed by law”. According to that, the Draft Law of Azerbaijan Republic “On Municipality's Report” (further – the Draft Law) was developed by the author of this article.

Draft Law determines the provisions for improving the municipalities' activity and for increasing their liability. Draft Law determines:

– how the Milli Majlis conducts an investigation on legal violations, committed as a result of the municipalities' activities;

- how the municipality’s report is prepared;
- how the municipality’s report is submitted to the Milli Majlis;
- how to apply the provisions on municipality’s liability in case if the law was broken.

According to the Draft Law, the municipality’s report is a submitted to the Milli Majlis. The report covers the activity of the municipality, as well as the results of an investigation of a municipality’s legal violation, conducted in accordance with the legal requirements.

The main purposes of the municipality report are:

- to ensure the transparency of the local self-government body’s activity;
- to increase community confidence to the municipalities;
- to supervise the expenses of the municipalities’ budgets, when it comes about the exercise of delegated competence.

The Draft Law underlines, that in case of a legal violation by a municipality, relevant Committee of the Milli Majlis should conduct a special investigation. After this investigation is ended, the Committee can demand a report from this municipality.

The relevant Committee of Milli Majlis can demand the report of the municipality in the following cases:

- if there is an appeal by 5% of voters on the basis of the relevant protocol;
- in case of serious violation of the law by the municipality;
- in case of regular (repeated) violations of the law by the municipality;
- in case of non-compliance by the municipality with court decisions that have entered into force;
- in case of the collecting illegal taxes by the municipality;
- in case when the municipality fails to fulfill its competence.

This Committee analyses the municipality’s report and discusses it at the plenary meeting of Milli Majlis.

Chapter 2 of the Draft Law is dedicated to the preparation of the report by the municipality, and Chapter 3 – to the examination of the municipality’s report.

The Draft Law proposes to organize the initial review of the municipality’s report as follows.

As a rule, receiving the municipality’s report, the appropriate Committee of Milli Majlis discusses it in its meetings for 15 days. During the period of the report’s discussion, the relevant Committee of Milli Majlis can ask the members of the municipality to submit all of the necessary data.

If it is necessary to make a supplementary examination, this period can be extended up to 30 days. In such a case, the relevant Committee of Milli Majlis sets up the Temporary Commission.

The Temporary Commission should include 5 members (2 members of the Temporary Commission should be chosen among the members of the relevant Committee of Milli Majlis, the other 3 members should consist of experts, appointed by the chairman of the relevant Committee).

The Draft Law includes the possibility of the additional investigation related to the municipality’s report. The decision should be taken by the relevant Committee of the Milli Majlis, and the investigation should be carried out by the Temporary Commission.

The Temporary Commission passes its proposals to the meeting of appropriate Committee of Milli Majlis, referring to the results of examinations. The results of the inquiry conducted by the temporary Commission are added to the municipality’s report. All of the expenses, related to this activity, should be paid by Milli Majlis.

The relevant Committee of Milli Majlis can present claims, as well as the offers and recommendations to the municipality – based on the report. These offers and recommendations are discussed by the municipalities. Based on the results of the discussion, the appropriate decision is taken.

The municipal report is submitted to the meeting of the Milli Majlis only if there are serious grounds to consider, that it has the information about the violations of the legal provisions. The final decision is taken by the Milli Majlis on its plenary meeting by the majority of the votes.

Chapter 4 of the Draft Law is dedicated to the liability of the municipality.

Based on the municipality’s report, the Milli Majlis can adopt a Law on the suspension of the municipality’s activity. By adopting such a Law, the Milli Majlis dismisses the municipality and appoints new elections.

In **summary**, it should be underlined, that the municipalities are the second level of public power in the Republic of Azerbaijan. The municipal power is a rather new type of power for the national society and state, as it was introduced after independence was proclaimed. The national municipal law still has a lot of gaps. One such gap involves the absence of the well-balanced concept of the administrative supervision of local authorities’ activities, especially when it comes to powers, delegated to the bodies of local self-government. This gap can be overcome by the adoption of the Draft Law of Azerbaijan Republic “On Municipality’s Report”, that is laconic but essential for the further development of the local self-government according to European standards. It will have other positive effects as well – for example, it will improve the situation with the protection of social rights at the local level.

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**Гараджаев Д. Місцеве самоврядування в Азербайджанській Республіці: проблеми адміністративного нагляду**

**Анотація.** Метастатті полягає в тому, щоб аргументувати, що прийняття проекту Закону Азербайджанської Республіки «Про звіт муніципалітету» матиме багато наслідків для національного муніципального права та сприятиме подальшому демократичному розвитку.

Місцеве самоврядування відіграє значну роль у кожній державі. Одним із найважливіших принципів конституціоналізму є принцип децентралізації публічної влади. Він є надзвичайно важливим для Азербайджанської Республіки. А вже довгий час у країні місцеве самоврядування було формальним – поки вона була суб'єктом федерації Союзу Радянських Соціалістичних Республік. Зараз тривають муніципальні реформи, спрямовані на те, щоб подолати цю «прогалину» у розвитку місцевого самоврядування. Багато уваги приділяється муніципальним виборам – як зробити їх більш прозорими, як підвищити інтерес громадян до них, щоб вони брали активну участь у всіх етапах виборчого процесу. Значна увага приділяється тому факту, що органи місцевого самоврядування відіграють велику роль у забезпеченні прав людини, особливо коли йдеться про соціальні права. Усі ці питання потребують уваги, і висновки Азербайджанської Республіки можуть бути корисними для інших пострадянських країн із аналогічним історичним досвідом.

Муніципалітети є другим рівнем публічної влади в Азербайджанській Республіці. До повноважень муніципалітету належать питання місцевого соціального захисту та соціального розвитку, місцевого економічного

розвитку та місцеві екологічні питання. Муніципалітети повинні звітувати перед виборцями про свою діяльність принаймні кожні 6 місяців, регулярно зустрічатися з громадянами, вивчати їхні потреби та намагатися їх вирішити. Муніципалітети обираються місцевим населенням і повинні звітувати перед ним.

Національне муніципальне законодавство має ще багато прогалин. Однією з таких прогалин є відсутність виваженої концепції адміністративного нагляду за діяльністю органів місцевого самоврядування, особливо коли йдеться про повноваження, делеговані органам місцевого самоврядування. Цю прогалину можна подолати шляхом прийняття проекту закону Азербайджанської Республіки «Про звіт муніципалітету», який є лаконічним, але важливим для подальшого розвитку місцевого самоврядування відповідно до європейських стандартів. Це матиме позитивний вплив і на інші сфери життя – наприклад, покращить ситуацію із захистом соціальних прав на місцевому рівні.

**Ключові слова:** місцеве самоврядування, територіальна громада, муніципальне управління, соціальна держава, соціальні права, європейські муніципальні стандарти, адміністративний нагляд.