LOCAL SELF-GOVERNMENT

ENP EU/Armenia Action Plan contains two provisions on local self-government:

- Ensure proper implementation of the Constitutional Reform providing better separation of powers, independence of the judiciary and functioning of local self-government; (Section 3 "Priorities for Action", Priority Area 1, Specific Actions).

- Strengthen local self-government, including capacities of local communities and civil service institutions, in line with European standards and ensure implementation of the European Charter of Local Self-Government (Section 4 "General Objectives and Actions", Sub-Section 4.1 “Political Dialogue and Reforms”).

While these provisions are very brief and general, the reform of local self-government will be considered in their context.

Constitutional and Legislative Reforms

The amended RA Constitution was adopted at the Referendum of November 27, 2005. Article 117 of Chapter 9 of the Constitution ("Final and Transitional Provisions") notes that after the amendments to the Constitution come into force the National Assembly shall within a two-year period harmonize the current legislation with the amendments to the Constitution. The amended Constitution came into force on December 6, 2005. This meant that the Constitutional norm above should have been implemented till December 7, 2007.

The renewed Constitution contains at least five significant provisions on local self-government, proceeding from the European Charter of Local Self-Government that the laws in force should be harmonized with. These are:

a) Yerevan is a municipal entity. The specifics of local self-government and formation of local self-government bodies in the city of Yerevan are stipulated by the Law (Article 108 of the RA Constitution).

b) Municipal Council (Council of Elderly of the community) through a legally stipulated procedure defines local tax (Article 107).

c) Mandate of the municipality leader and the procedure of its implementation is defined by the law (Article 107).

d) Principles, procedure of uniting or separating municipalities as well as timeframes for elections of local self-government are stipulated by the Law (Article 110).

e) Through a procedure, stipulated by the law, intermunicipal unions can be established (Article 110).

The legislation was not harmonized with these provisions within the timeframe stipulated by the Constitution. By the end of 2008 the National Assembly adopted only the Law “On Local Self-Government in Yerevan” (December 26, 2008). According to the Law, the elections to local self-government bodies of Yerevan were to be held within April 1 - December 6, 2009.

In 2008 certain work was administered along other directions, too. The RA Government approved the concept “On Local Tax” (September 18, 2008), approved the new draft law "On Financial Leveling" (September 18, 2008), draft laws, proceeding from the local tax concept (December 18, 2008), and acknowledged the "Conceptual approaches to form intermunicipal unions and enlargement of communities”. The documents mentioned were developed by the Association of Communal Finance Officers. The drafts were submitted to the National Assembly following an appropriate procedure.

In 2007-2008 more than a dozen draft laws amending legislation of self-government were adopted, yet very few of them contributed to the strengthening of local self-government system and its development. Thus, six laws were adopted to amend the RA Law “On Local Self-Government”. Two of them were of technical nature, one eliminated the controversy between the Law “On Local Self-Government” and the Electoral Code, another one harmonized the Laws “On Local Self-Government” and “On Municipal Service”, and only the two others were following the interests of the local self-government, one of them - partly. Thus, one of these laws entitled the local self-government bodies with a mandate to organize traffic (adopted February 22, 2007), and this is positive, yet no funding was allocated for this, which is negative. By another Law, which is positive, the local self-government bodies are entitled to use the funding budget for their operational expenses, if a number of conditions is met, including the return of these funds within the given budget year (December 4, 2007).

The RA Law “On Budget System of the Republic of Armenia”, in the part dealing with local budgets, was amended three times. Twice the amendments were technical, and once - the same as in the Law “On Local Self-Government”.

The RA Law “On Local Duties and Fees” was amended twice - only to clarify the definitions.

On September 30, 2008 a Law “On Introducing Amendments to the RA Law ‘On Municipal Service’ ” was adopted. It is quite lengthy, and contains not only technical and editorial revisions, but also introduces clarity in the procedures of the municipal service system. At the same time it included a provision, challenging the independence of local self-government bodies: "The list of the positions of municipal service of the office of the head of each of municipalities, and the list of positions in each group and subgroup of municipal service is ratified by a state body, authorized by the Government of the Republic of Armenia " (Clause 1, Article 7). Through this, the mandate of the municipal council is actually transferred to a state body, authorized by the RA Government.

The legislation in force, apart from the constitutional requirement of adoption of new laws, needs improvement as it is, too. In particular, it is necessary to adopt a law on municipal stock. There are other issues, too, that call for legislative regulation. These include the entry of municipalities into the loan market, regulation of subsidies from the state budget, etc.

Ensuring of the Implementation of the Legislation

Ensuring the implementation of laws is as important as their adoption. Many provisions of the European Charter of Local Self-Government were reflected in the Armenian legislation, too. Yet their application is far from being satisfactory. Below the assessment of the actual application of principles of European Charter of Local Self-Government.

Subsidiarity. The essence of this principle is the implementation by local self-government on the lowest administrative level (municipalities, districts, etc.) of public administration functions, most appropriate for these levels. This stands for an appropriate delegation of public administration functions from the top level (national government) to the lowest level (municipalities). This principle is not fully effective due to the lack of conditions. Firstly, there is a legislative gap here. The local self-government is one-tier, and many of the functions, characteristic of it, are performed by state or central bodies of administration (secondary education, healthcare, public order, etc.) Secondly, this one-tier system has many small and poor communities, the self-government of which is unable to fulfill the competence it has by law. Thus, the local self-government is not fully effective in Armenia.

General competence. The essence of the principle is that the self-government bodies have a right to attend to any issue of interest to the community and solve it, if it is beyond the mandate of the state bodies. Yet the real capacities of the local self-government bodies are so small, that they are actually unable to realize this right. This principle is not practically enforced.

Independence and responsibility. The degree of independence of local self-government bodies in the country in many ways depends on the overall state of democracy in the country. In this regard the situation is far from being satisfactory. With regard to the independence of local self-government in 2007-2008 an unrivaled retreat was recorded. The local self-government bodies were not very independent before that, either, yet during the parliamentary elections of 2007 and presidential elections of 2008 they were pure implementers of orders from the incumbent authorities.

Financial independence. The Armenian authorities did not take measures to enhance the financial independence of municipalities. The share of municipal budgets in the expenses of the consolidated budget and GDP remains very small (in 2007 - 7.2% and 1.7%, respectively). To compare, these indices in the countries of Central Europe and Baltic states make 20-30% and 7-13%, respectively. Around 40% of municipal revenues are constituted by official grants. No steps were taken to introduce municipalities into loan capital market.

Financial leveling. A significant shortcoming of the existing mechanism of financial leveling is that its main indicator is the number of population within the municipality's mandate and, to a certain extent, its financial capacities, while the needs of the municipalities are completely neglected. Besides, the leveling subsidy is received by all municipalities, and not those in the greatest need. As noted above, the new draft on financial leveling was approved by the Government and submitted to the National Assembly. The draft overcame the shortcomings of the legislation in force. It is expected that after the law is adopted it will be enforced since January 1, 2010.

Administrative supervision. According to the European Charter of Local Self-Government, the administrative supervision over the activities of local self-government bodies should only be extended top include the legal domain, i.e., the correspondence of the local decision-making to the Constitution and the laws. Only the scope of supervision over the delegated functions can be expanded, the so called special supervision. Yet in practice the control over local self-government is far beyond the legal frames and is implemented by different representatives of the upper tier of power.

Protection of common interest by local self-government. The European Charter of Local Self-Government records the right of local administration bodies to associate to

protect common interest. This means an establishment and activity of a council of municipalities on a national level. Of course, the municipalities themselves are responsible in this matter, yet the central authorities should ensure the necessary conditions. The municipal associations are established only in the regions of Armenia, they are mostly busy with implementation of various programs rather than the protection of common interest. On the national level no associations of municipalities exist.

The solution of problems of common interest to local authorities. To solve issues of common interest intermunicipal associations may be established. As noted above, no appropriate law has been adopted so far. To this effect municipalities can also sign direct agreements, yet this is almost never done.

Formation of local self-government bodies through elections. Elections of local self-government are held at different times in different communities. In 2007 heads of 105 municipalities were elected, in 41 cases only one candidate ran in elections.[30] The heads of municipalities were mostly elected out of the parties of ruling coalition. In the same year in 37 communities elections to the Council of Elderly were held. In a greater number of communities elections to local self-government bodies were held in 2008. In the course of two months elections in 822 communities were held, of these in 765 the Council of Elderly was elected, and in 659 - the head of the municipality.[31] According to Central Electoral Commission, the voter turnout all over the country made 48.7%, and in Yerevan communities it came to 33.2%. This means that so far less than a half of the population takes part in the formation of local self-government bodies. Elections to the local of self-government came to show once again, that no free, fair and transparent elections can as yet be held in Armenia. The numerous violations in the course of elections were pointed out in the reports of both local ("It's Your Choice" and Helsinki Committee of Armenia), and foreign (Congress of Local and Regional Authorities of the Council of Europe) observation missions: group and open voting, participation of the police in the vote count, the incompliance of the ballot bins location to the legal requirements, lack of transparency of elections, bribing voters etc. In many cases only one candidate was registered for elections of municipal heads, representing one of the ruling parties. Thus, in 22 out of 42 communities of Kotayk region only one candidate ran in elections of municipality heads, including 15 representatives of "Prosperous Armenia" party and 7 - of Republican Party of Armenia, Overall, the candidates of the four parties of ruling coalition became heads of 62% of municipalities, including Republican Party of Armenia - 323, "Prosperous Armenia" - 37, "Dashnaktsutiun" - 39, "Orinats Yerkir" - 9. Representatives of opposition parties managed to take only one position of the community head. The picture is similar in elections to the Councils of Elderly.

Comprehensive and exclusive competence of local self-government. This means that none of the state administration bodies have a right to interfere with the competence, delegated to the local self-government, and direct this competence. Besides, the competence must be distinctly specified as belonging to the local self-government body, with no dubious interpretations possible. In reality the state bodies do not only often interfere and direct, but also often impose certain actions on the local self-government bodies.

[30] www.cfoa.am "Reform of Local Self-Government in Armenia" Report, Communal Finance Officers Association.
[31] www.a1plus.am "CEC Chairman Confused in Fruit ", November 7, 2008.

Consultations. In the course decision making on local self-government, the state authorities must consult the local self-government bodies if possible. This requirement is actually fulfilled only formally. Firstly, no influential bodies to protect the interests of local self-government have been formed, and secondly, the independence of local self-government is very low.

Formation of municipal service institute. Steps were taken to form the institute municipal service. The RA Law “On Municipal Service” started to be applied. Yet the Law contains numerous shortcomings, and is almost in active in small communities and formal - in medium-sized and large communities.

Court protection. The right of local self-government bodies for court protection is seldom applied. The main reason is that the court system of Armenia is not independent and does not enjoy the trust of the society. This is pointed out also in the PACE Resolution 1609 of April 17, 2008. Among other reasons for this one can name the wish to avoid court hustle, lack of appropriate knowledge, etc.

Conclusion

Thus, the requirements on local self-government in the ENP EU/Armenia Action Plan remain almost unfulfilled. Certain steps were made only starting from autumn 2008.

Of the great number of laws, contributing to the development of local self-government, only one was adopted in 2007-2008 "On Local Self-Government in the City of Yerevan”. The independence of the communities not only did not increase, but rather the contrary, came down. The democracy on the local level is very weak and needs significant strengthening. Nothing is done to enhance the financial independence of municipalities. The communities still lack the resources to effectively implement their functions.