



COUNCIL    CONSEIL  
OF EUROPE    DE L'EUROPE  
Committee of Ministers

*Ministers' Deputies*

## **Records**

**CM/Del/Act(2001)739** (CONFIDENTIAL) 27 March 2001

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**739<sup>th</sup>** meeting, (*in camera*) 1 mars 2001

## **Summary Records**

**Honouring of commitments by Council of Europe member states**

**Addendum to CM/Del/Dec(2001)739**

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**I. GENERAL QUESTIONS – ADOPTION OF THE AGENDA**

1. The agenda, as given in document CM/Del/OJ(2001)739 revised 2, was adopted.

**II. POLITICAL QUESTIONS****2.1. Progress reports:****i. Freedom of expression and information (cont'd)**

2. The Head of the "Monitoring" Department of the Directorate of Strategic Planning (DSP) indicated that the results of the Secretary General's contact and information missions had been published at the end of February 2001 as agreed (see Doc. CM/Monitor(2001)6 and Addenda; see also doc. CM/Monitor(2001)4).

3. The Representative of Ukraine explained that in the context of Resolution 1239(2001) and Recommendation 1497(2001) of the Parliamentary Assembly on freedom of expression and the functioning of parliamentary democracy in Ukraine, the Ukrainian authorities had announced that they were willing to cooperate with the Council of Europe in a constructive and transparent way and were proposing a series of activities relating to freedom of the media for which they were requesting expertise and support from the Council of Europe (see Appendix I). The Ukrainian delegation also wished to inform the Deputies of the outcome of the investigation into the case of Mr Gongadze (see Appendix II). The Representative of Ukraine stressed that to date no request had been issued by the Ukrainian parliament (Verkhovna Rada) so that the Committee of Ministers be in a position to "arrange for an independent examination of the original audio-tapes" as recommended in paragraph 1 ii a of Recommendation 1497(2001). He also said such an examination had been carried out by the International Press Institute in Vienna but, according to his information, the tapes examined were not the originals.

4. The Representative of Sweden said he welcomed the decision taken by Ukraine in favour of cooperation. However, on behalf of the European Union, he presented the EU Declaration on freedom of expression and information in Ukraine of 1 March 2001 (see Appendix III), drawing attention to the EU's concerns in this regard. The Representatives of Norway, Iceland, Germany, Liechtenstein, France, Malta, Portugal, the United Kingdom, Switzerland and Latvia supported the position adopted by the EU. The Representatives from Moldova, Turkey, the Russian Federation, Armenia, Azerbaijan and Georgia emphasised the constructive approach taken by Ukraine. The Representatives from Lithuania, Poland, Italy and Romania, while they understood why the European Union was concerned, supported the constructive approach taken by Ukraine.

5. The Chairman observed that this question would be raised again during the discussion on the Committee of Ministers' reply to the Parliamentary Assembly at the meeting on 18 April 2001.

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- ii. **functioning and protection of democratic institutions, including matters relating to political parties and free elections (contd.)**
- iii. **functioning of judicial system (contd.)**
- iv. **capital punishment (contd.)**
- v. **police and security forces (contd.)**
- vi. **effectiveness of judicial remedies**

6. The Deputies noted progress made with respect to the different themes (see doc. CM/Monitor(2001)4). See also Item 5.

## 2.2. Local democracy

7. The Chair welcomed Professor Gérard Marcou, who on behalf of the Secretariat had carried out the country-by-country survey of progress achieved with respect to local democracy over the period 1998-2000 (see doc. CM/Monitor(2001)3 and Addendum) and who had been invited to attend at the Secretary General's request.

8. The Head of the Secretariat of the Congress of Local and Regional Authorities of Europe (CLRAE) presented the Congress' contribution to the Committee of Ministers' monitoring procedure with respect to local democracy (see document CM/Monitor(2000)22). He concluded that the CLRAE had stepped up its work in this field, and that progress had been recorded both locally and in terms of regionalisation.

9. The Director of Cooperation for Local and Regional Democracy reported on the work of the Steering Committee on Local and Regional Democracy (CDLR) and the adjustments made to the ADACS programme (henceforth Council of Europe cooperation programmes) on the basis of the Committee of Ministers' monitoring priorities (see document CM/Monitor(2001)1) and concluded that although the CDLR's inter-governmental experience was positive, the results of the ADACS programme were more mixed owing to a lack of resources.

10. Professor Marcou presented the results of his survey, drawing attention to the problems encountered by member States and highlighting the main European trends.

11. The Representatives of Malta, Romania, Cyprus (see Appendix IV), Latvia, Finland, Estonia (see Appendix V), Ukraine, Croatia, Lithuania, France, Germany, Sweden, Slovakia, Switzerland, Hungary, Turkey, Norway, and Liechtenstein presented a number of comments, corrections and updates relating to document CM/Monitor(2000)3 and Addendum. The Deputies discussed the subject with Professor Marcou.

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12. In reply to the Representative of Germany, and following a proposal made by the Head of the DSP Monitoring Department, the Deputies agreed, in preparation for the Riga Conference on local democracy scheduled to take place in May 2001, to send the Secretariat their comments in writing by 20 March 2001, so that a revised version of document CM/Monitor(2001)3 and Addendum could be circulated at the beginning of April and, providing it was declassified, sent to the Conference participants.

13. The Representative of Georgia told the delegations about the statement issued by his ministry concerning the so-called "local elections" in Abkhazia (see Appendix VI). The ministry was currently awaiting an appropriate reply from the Council of Europe on the subject.

14. In reply to the Representative of Norway, the Representative of the Russian Federation explained that for security reasons local authorities in the Chechen Republic were appointed by the central government and were not yet elected. The priority was therefore to ensure federal laws were applied in the Republic. The Russian delegation also encouraged the Council of Europe to promote transfrontier cooperation between Russian local authorities and neighbouring countries.

15. In reply to the Representative of France, the Head of the CLRAE Secretariat explained that the Congress was discussing the question of cuts in local finance and the need for equalisation and that the search for equality must not be to the detriment of the need for a certain degree of autonomy. Professor Marcou stressed that the solution lay in a balance between the need for effective local self-government and the desire for financial equalisation of rich and poor local authorities.

16. In reply to the Representative of Lithuania, the Director of Cooperation for Local and Regional Democracy said comparative studies carried out by the CDLR with respect to local democracy provided the Deputies with several options.

### 3. RELATIONS WITH THE PARLIAMENTARY ASSEMBLY

17. The Deputies noted that the possibilities of organising an informal exchange of views between the Chair of the Committee of Ministers and the Bureau of the Assembly's Monitoring Committee would be explored by the Chairman with a view to the Assembly's April 2001 or June 2001 Part-Session.

### 4. DECLASSIFICATION OF COMMITTEE OF MINISTERS MONITORING DOCUMENTS

18. The Deputies discussed the proposal to declassify monitoring documents issued prior to 2000. The Representatives of Germany, Finland, Portugal, Estonia, Norway, Lithuania, Liechtenstein, the United Kingdom, Austria, Slovenia, Greece, Sweden, Croatia, the Czech Republic, Italy, Hungary, Georgia, Malta, Andorra, Cyprus, Armenia and Switzerland backed the Chair's proposal to declassify monitoring documents issued before 2000. The Representatives of Turkey, the Russian Federation and Ukraine were opposed to declassification, whereas the Representatives of Romania and Moldova were in favour of an intermediate solution along the lines of the rules applied by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) with

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respect to its country reports.

19. Upon the Head of the Monitoring Department's proposal, the Deputies agreed to make document CM(98)22 available to the Steering Committee for Human Rights (CDDH) to make its work easier.

**5. OTHER BUSINESS**

20. In light of the delays that had occurred in the transmission of "national contributions" on the effectiveness of judicial remedies, the Deputies agreed to amend the timetable for this theme as follows:

End of May 2001	Circulation of provisional text of overview to states in question [...]
Middle of July 2001	Deadline for states who so wish to submit supplementary written observations
Early September 2001	Transmission by the Monitoring Department, DSP, of national contributions [...]
Early October 2001	Issue of overview [...]
November 2001	Committee of Ministers' discussion [new date still to be fixed]

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APPENDICES

- Appendix I: Ukrainian Aide-Memoire on the implementation of provisions of subparagraph (iv) paragraph 1 of Recommendation 1497 (2001) of the Parliamentary Assembly of the Council of Europe
- Appendix II: Information on the results of investigation of the G. Gongadze case, provided by the Ukrainian authorities
- Appendix III: European Union Statement on the "Freedom of expression and information in Ukraine
- Appendix IV: "Statement by Ambassador Christophoros Yiangou at the 739<sup>th</sup> Meeting of the Committee of Ministers' Deputies with regard to Monitoring of Compliance with Member States' Commitments on Local Democracy"
- Appendix V: "Explanatory Memorandum to survey on the progress achieved within the framework of the monitoring procedure on local democracy in Estonia by Professor Gérard Marcou"
- Appendix VI: Statement of the Ministry of Foreign Affairs of Georgia
- Appendix VII: Information about state of development of local democracy in Ukraine

APPENDIX I

1 March 2001

**Aide-Memoire**  
**on the implementation of provisions**  
**of subparagraph (iv) paragraph 1 of Recommendation 1497 (2001)**  
**of the Parliamentary Assembly of the Council of Europe**

1. Ukraine is interested in a constructive co-operation with the Council of Europe in implementing Recommendation 1497 (2001) of the Parliamentary Assembly of the Council of Europe in order to improve the general framework in which mass media operate.
2. The Ukrainian side expresses its gratitude to the Council of Europe for the attention and assistance rendered by the Organisation in securing freedom of expression and unimpeded activities of mass media. Ukraine will take all possible actions to fulfill the scheduled programmes of co-operation with the Council of Europe for 2001, in particular:
  - organisation of the seminar on Regulation and Self-regulation of Journalists' Activities (Kyiv, 4<sup>th</sup> quarter of 2001);
  - carrying out legal expertise of Ukraine's legislation in the sphere of mass media by the Council of Europe (throughout 2001).
3. Ukraine counts on providing greater assistance by the Council of Europe in order to achieve a noticeable improvement of the general framework in which mass media operate and to promote substantial changes in the media culture of officials and journalists in compliance with the provisions of subparagraph (iv) paragraph 1 of Recommendation 1497 (2001) of the PACE.
4. Within the framework of fulfillment of subparagraph (iv) paragraph 1 of the mentioned Recommendation of the PACE the Ukrainian side proposes to undertake the following activities with organisational, financial and expert support of the Council of Europe:

in the legal sphere

- to engage Council of Europe experts in the process of bringing Ukraine's legislation to conformity with the Council of Europe standards in the light of recommendations on the protection of journalists, freedom of expression and access to information (Rec (2000) 23, Rec (2000) 7, Rec (99) 15, Rec (99) 1 of the Committee of Ministers of the Council of Europe);
- to hold a consultative meeting with Council of Europe experts with participation of relevant Committee of the Verkhovna Rada and the State Committee on Informational Policy, TV and Radio Broadcasting on the issue of ratification of the European Convention on Transfrontier Television and the Protocol thereto.

- to carry out translation and publication in Ukrainian of the case-law of the European Court of Human Rights concerning Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms with the purpose of increasing the awareness of mass media representatives and officials of the mechanism of protecting freedom of expression under this Article;
- to work out a programme of seminars for judges of courts of different levels concerning the application of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms on the basis of case-law of the European Court of Human Rights;

#### in the sphere of education and culture

- to ensure the participation of Ukrainian mass media representatives in the activities within the framework of the Council of Europe's "European year of languages (2001)", the Conference on application of the European Charter for Regional or Minority Languages (the Netherlands, September 2001) and the Conference "Linguistic Policies for a Multicultural Communities" (Birmingham, October 2001) in order to promote a speedy and effective integration of Ukraine into the European informational space;
- to organise regular traineeships of young Ukrainian journalists in relevant structures of the Secretariat of the Council of Europe, in particular, in the Mass Media Division of the General Directorate on Human Rights and in the Department of Mass Media and Public Relations;
- to hold round-tables for mass media representatives of Ukraine with the purpose of expanding their knowledge of the legal basis of the journalists activities in accordance with Council of Europe standards.

#### in the sphere of public relations

- to work out and to implement a programme of development of regional press and TV and radio broadcasting as well as mass media of local self-government and to promote public broadcasting;
- to conduct training courses for the representatives of public relations departments of law enforcement agencies of Ukraine to increase the culture of their interaction with journalists;
- to hold a round-table with participation of the representatives of Ukrainian and international journalist organisations and public authorities with the purpose of searching the ways of improving the general framework in which mass media operate in Ukraine;
- to conduct series of all-national radio and TV programmes on the theme of freedom of expression and access to information in accordance with Council of Europe standards.

5. In order to provide even greater assistance to Ukraine to achieve a noticeable improvement of the general framework in which media operate and to promote substantial changes in the media culture of its officials and journalists, the Ukrainian side proposes to elaborate a Joint programme between the Council of Europe and the Commission of the European Communities to ensure relevant funding of the above-mentioned activities.

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**INFORMATION****on the results of investigation of the G.Gongadze case**

Georgy Gongadze, Ukrainian journalist and editor of on-line publication "Ukrainska Pravda", disappeared on September 16<sup>th</sup> 2000. He was last seen approximately at 22:30 on September 16<sup>th</sup> 2000 by witness O.Pritula, employee of "Ukrainska Pravda". No information was received from G.Gongadze since then.

On September 19<sup>th</sup> 2000 the Office of Public Prosecutor of Pechersky district of city of Kyiv instituted criminal proceedings on disappearance of journalist G.Gongadze.

On December 7<sup>th</sup> 2000 the criminal case was taken for further investigation by the Office of the Prosecutor General of Ukraine in order to ensure complete, comprehensive and objective investigation.

On December 3<sup>rd</sup> 2000 a separate criminal proceedings were instituted on the fact of finding of decapitated corpse in the forest of Tarascha district, Kyiv region.

Later on, taking into consideration the assumption that the Tarascha-found corpse may belong to G.Gongadze, the Office of the Prosecutor General of Ukraine united the two mentioned cases into a single proceeding.

During the preliminary investigation more than 200 persons were questioned and more than 20 expertise were conducted with involvement of foreign experts in some of them.

In particular, the following main expertise were carried out in order to determine whether the body found near Tarascha belonged to G.Gongadze:

- comprehensive forensic expertise was carried out by the Main Forensic Expertise Bureau of the Ministry of Health of Ukraine. The expertise established that the found corpse is a male one aged 30-39, height limited to 177-184 cm. There were found splinter-made wounds on the corpse in the area of the right forearm, right hand and right humeral joint which were caused during the life of the man; they had characteristics of an explosion-related trauma with injury by metal splinters. Expert investigation allowed assuming that the decay processes of the

unidentified body had lasted for approximately 2-3 months. The experts did not identify the cause of death of the Tarascha-found corpse;

- forensic-genotyposcopic expertise was carried out by experts of the Main Forensic Expertise Bureau of the Ministry of Health of Ukraine with involvement of experts of the state agency "Russian Center for Forensic Expertise of the Ministry of Health of the Russian Federation". According to the conclusions of the experts, the calculated combined (relative) probability of the fact that O.T.Gongadze is the mother of unidentified man, whose fragmentary remains were examined, is no less than 99.60%.
- forensic-pedologic expertise was carried out by Kyiv Scientific Research Institute of Forensic Expertise of the Ministry of Justice of Ukraine. Its results together with other materials of the investigation give ground for perception that the corpse found in Tarascha district, Kyiv region was reburied. Besides, the place where the corpse was found (near a road) showed that the burial was conducted in a way that the corpse could be easily discovered.

On December 18<sup>th</sup> 2000 identification of the found corpse by Myroslava Gongadze – the wife of G.Gongadze – was carried out. During the examination the latter stated that there was great probability that the corpse presented to her for identification belonged to her husband.

At the same time, the Office of the Prosecutor General of Ukraine recorded written testimonies of the witnesses, including acquaintances of G.Gongadze (witness G.Royik, witness N.Panchuk, witness S.Shapova and witness S.Matsyshyn), who saw him alive after disappearance. Thus, witness G.Royik said that she had met G.Gongadze for the last time in the city of Lviv on Monday, September 18<sup>th</sup> at 3.30 p.m. approximately. Witness N.Panchuk said that she had met Gongadze at premises of a bank in Lviv on December 22<sup>nd</sup> 2000. Witnesses S.Shapova and S.Matsyshyn gave evidence that they had seen Gongadze in Lviv in late November - early December 2000.

Taking into consideration the above-mentioned testimonies, the investigating bodies for a certain period of time found no sufficient grounds to recognize that the Tarascha-found corpse belonged to Gongadze.

At the same time, the investigating bodies undertook additional investigatory and operative actions to conduct final identification of the Tarascha-found corpse. In particular, the investigating bodies took into account the conclusions of professor P.Ivanov, forensic expert of "Russian Center for Forensic Expertise of the Ministry of Health of the Russian Federation" which he received as the result of additional research on his own initiative. According to the mentioned conclusions, the combined probability that bone fragments of the unidentified man's body corpse may belong to G.Gongadze is no less than 99.9%. In order to verify these data, in accordance with legislation on criminal proceedings, an additional forensic-genotypicoscopic expertise is scheduled. It is planned that the experts of the FBI and the Ministry of Defense of the U.S.A. will be involved.

On February 26<sup>th</sup> 2001, taking into consideration the results of the actions taken, the investigating bodies recognized that the Tarascha-found corpse belonged to Gongadze.

On February 27<sup>th</sup> 2001 the Prosecutor General of Ukraine decided to institute criminal proceedings on premeditated murder of G.Gongadze.

The Office of the Prosecutor General of Ukraine also recognized mother and wife of G.Gongadze as aggrieved side. In accordance with the provisions of criminal proceedings legislation of Ukraine, they may produce evidences, make requests and have their representative regarding the criminal case as well as have access to all materials of the criminal case after conclusion of the investigation.

During the investigation of G.Gongadze case the investigating bodies are working out several versions, in particular the version of murder of G.Gongadze because of his professional activities, because of possible debts or because of common reasons.

As of 28<sup>th</sup> February 2001, none of the above-mentioned versions can be finally confirmed despite the considerable volume of investigatory and operative actions.

Special attention was paid by the investigating bodies to the investigation on the version on the premeditated murder of G.Gongadze as a reason of his professional activities. In this regard, the version of involvement of top officials of Ukraine to the disappearance of G.Gongadze was investigated.

This version was examined after the statement of People's Deputy O. Moroz, who, having promulgated on November 28<sup>th</sup> at the session of the Verkhovna Rada of Ukraine the audio records of alleged conversations of the President of Ukraine and other officials regarding G.Gongadze, transferred to the Office of the Prosecutor General three audio cassettes containing records of relevant content.

On December 11<sup>th</sup> 2000 the Office of the Prosecutor General of Ukraine received a videocassette containing a record of statement of Mr.Melnychenko made in the presence of People's Deputies of Ukraine S.Holovaty, V.Shyshkin and O.Zhyr regarding implication of the President of Ukraine and of several other high officials of the state to the issuing of illegal orders. While making a statement, Mr.Melnychenko referred to the records at his disposal that contained conversations allegedly made in the working cabinet of the President using a digital dictaphone, placed under sofa.

On December 13<sup>th</sup> 2000 the Office of the Prosecutor General of Ukraine received a request of People's Deputy O.Moroz containing a copy of statement of Mr.Melnychenko dated 16 November 2000 and a videocassette containing the record with accusation of the above-mentioned officials of involvement to the kidnapping of journalist G.Gongadze.

With the purpose of examination of the mentioned accusations the investigating bodies conducted special expertise and interrogated persons concerned.

In order to establish the authenticity of audio records promulgated by O.Moroz, in accordance with the orders of the investigating bodies, a phonoscopic expertise and two additional phonoscopic expertise were conducted (including the one made after reconstruction of environment and conditions of the event, conducted in the Cabinet of the President of Ukraine with participation of investigator and expert to check the possibility of conducting of audio recording in the way described by Mr.Melnychenko).

In accordance with the conclusions of phonoscopic expertise conducted by Kyiv Scientific Research Institute of Forensic Expertise of the Ministry of Justice of Ukraine, the phonograms contained in the presented compact cassettes are copies that are affixed through re-recording from previously created models. The models from which re-

recording of the phonograms under expertise was made, consist of no less than 14 separate episodes that are artificially connected using selection (montage). The models are also not originals. Linguistic signal on the models of phonograms was subject to editing (through exclusion or insertion of separate phrases, words, fragments of words, sounds). Methodical requirements for phonograms as material evidences, in which signal was subject to sampling and editing, put them into the type of objects for which it is impossible to determine authenticity of information using expert methods. Some parts of phonograms were recorded using microphone that was not screened by acoustic absorbent objects, e.g. sofa, chairs, etc. The statements of Mr.Melnychenko about placement of microphone of sound recording device underneath a sofa (which is a sound screening object) during fixation of separate fragments of conversations under expertise do not correspond to the discovered results. It is impossible to determine if certain phrases were pronounced by L.Kuchma, Yu.Kravchenko, V.Lytvin and L.Derkach because of the editing (exclusion or insertion of separate phrases, words, fragments of words, sounds) and low quality of the examined recordings that does not allow to single out a sufficient complex of indications for scientifically grounded expert identification of a person.

On November 30<sup>th</sup> 2000 President of Ukraine L.Kuchma was interrogated. He stated that he had never issued illegal orders or assignments and that he had no relation to the disappearance of G.Gongadze. On the contrary, he demanded from the heads of law enforcement agencies to speed up the investigation of G.Gongadze case.

Head of Administration of the President of Ukraine V.Lytvin and Minister for Internal Affairs Yu.Kravchenko denied the fact of conversations of the President of Ukraine regarding kidnapping of G.Gongadze and denied their connection to the masterminding of the plan and execution of kidnapping of the journalist G.Gongadze. On the other hand, they confirmed that the President of Ukraine issued orders to the law enforcement agencies to undertake necessary measures in order to find G.Gongadze.

Head of the Administration of State Guard of Ukraine V.Shepel, when interrogated as a witness, stated that taking into consideration the existing system of guarding of the Cabinet of the President of Ukraine, it is impossible to conduct recording of his conversations there. Such conclusion is confirmed by the testimonies of another 36 employees of the Administration of State Guard and of the Administration of the President of Ukraine. In accordance with the Instruction of the

Administration of State Guard, Mr.Melnychenko, both under his duties and as provided by the order of examination of the cabinet of the President of Ukraine, was not a member of the inner circle of guard of the President of Ukraine.

The facts of commission of illegal actions by the President and top officials of Ukraine (in particular, regarding the circumstances of shadowing of G.Gongadze, making pressure on one of the Heads of District Department of Internal Affairs of Chernihiv region, circumstances of transfer of the premises of the Narodny Rukh of Ukraine, organization of physical elimination of V.Chornovol), contained in Melnychenko's audio records, were examined in detail during the investigation and were not confirmed.

On the basis of the results of the above-mentioned expertise and obtained testimonies the investigating bodies established the following:

- (1) impossibility of audio recording in the cabinet of the President of Ukraine in the way described by Mr.Melnychenko;
- (2) audio records of conversations on behalf of state officials contained in the cassettes transferred to the investigating bodies by People's Deputy O. Moroz are put together from separate fragments and words, which in fact is a falsification;
- (3) it is impossible to determine if the voices contained in the mentioned cassettes belong to the top officials.

On December 3<sup>rd</sup> 2000, taking into the consideration the aforesaid, the Office of the Prosecutor General of Ukraine refused to institute criminal proceedings against President of Ukraine L.Kuchma, Head of Administration of the President of Ukraine V.Lytvin and Minister for Internal Affairs Yu.Kravchenko.

As of 28<sup>th</sup> February 2001 the investigating bodies do not have any information that could confirm the existence of the originals of Mr.Melnychenko's audio records or that could reveal their location.

The investigating bodies undertake all necessary measures in order to obtain the originals of the audio records, if they do exist, which may permit to establish their authenticity for certain.

On January 4<sup>th</sup> 2001 the Office of the Prosecutor General of Ukraine instituted criminal proceedings against Mr.Melnychenko on the corpus delicti provided for in paragraph 3 of Article 125 of Criminal Code of Ukraine – libel of top officials of the State, concerning their involvement to disappearance of G.Gongadze.

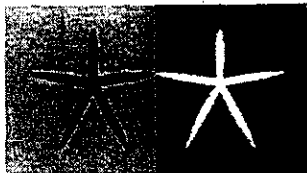
On February 14, 2001 the Office of the Prosecutor General of Ukraine, having considered new episodes of the case, instituted criminal proceedings against Mr.Melnychenko on the corpus delicti provided for in paragraph 3 of Article 166 of Criminal Code of Ukraine – exceeding of authority and official duties and in paragraph 2 of Article 67 – dissemination of information that contains state secret.

At the same time, the Office of the Prosecutor General of Ukraine sent to INTERPOL a request on international search of Mr.Melnychenko.

In order to complete the G.Gongadze case the investigating bodies are additionally conducting a considerable volume of investigatory and operative actions.

A joint investigating group was established and a plan of additional joint investigatory actions of the Office of the Prosecutor General of Ukraine, the Ministry for Internal Affairs of Ukraine and the Security Service of Ukraine was elaborated. The Office of the Prosecutor General of Ukraine sent a request to the competent authorities of the United States to consider possibility of providing assistance in investigation of G.Gongadze case. The Director of FBI L.Freeh positively responded to the request.

The investigating bodies do not have any objection to the involvement of foreign experts by expert institutions of Ukraine if there are grounds for conducting additional expertise.



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The Swedish Presidency  
of the European Union

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APPENDIX III

Strasbourg, 01 March 2001

EU STATEMENT

Freedom of expression and information in Ukraine

The European Union wishes to recall its Declaration of 5 February 2001 about working conditions for media in Ukraine and concerns regarding the Gongadze case.

In this Declaration the European Union repeated its concerns about the problematic environment for the media in Ukraine and the need to ensure a safe, secure and harassment-free environment for journalists to operate in.

We called for a full and transparent enquiry into the disappearance of Mr Heorhiy Gongadze. Such an enquiry would generate greater confidence in the Ukrainian authorities handling of this issue.

The EU further declared that it stands behind the concerns raised by the Parliamentary Assembly of the Council of Europe in its Resolution 1239 of 25 January and that it supports the call by the PACE for the Council of Europe to arrange for an independent analysis of the Gongadze tapes.

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Statement by Ambassador Christophoros Yiangou  
at the 739<sup>th</sup> Meeting  
of the Committee of Ministers' Deputies  
with regard to Monitoring of Compliance  
with Member-States' Commitments on Local Democracy  
Strasbourg, 1 March, 2001

Mr. Chairman,

*important*  
~~First of all~~ I would like to warmly congratulate Professor Gerard Marcou for the excellent work he has done with regard to the important theme of monitoring of commitments undertaken by member-states of the Council of Europe on local democracy. And of course I need not really at this point of time speak about the importance of local democracy itself, as well as of the importance it entails for a society as a whole.

Upon instructions of my authorities, Mr. Chairman, I would like to offer some comments on the content of the chapter on Cyprus in the document prepared by Professor Gerard Marcou, as follows :

As you may have noticed, Mr. Chairman, Professor Marcou observes that "the powers assigned to them i.e. to municipalities remain negligible, despite the fact that their general remit is recognised by the Law". I would like to make the point in this respect that the powers assigned to local authorities with the revision in 1997 of the 1985 Municipalities' Law, are considered to be very important, taking into account the size of the municipalities as, of course, the size of Cyprus. At the same time I would also like to stress that the powers assigned to local authorities can also change depending on the degree of co-operation among the municipalities.

Now, with regard to the local public expenditure, I would like to say that the governmental grant allocated to local authorities in 1999 was 4‰ and in 2000 was 9‰ of the income of the Government of the Republic of Cyprus, whereas this year, the

year 2001, the governmental grant to municipalities has already reached 1 % of the income of the Government.

Before concluding, Mr. Chairman, I would also like to make a final point and that is with regard to the observation made by Professor Marcou that, and I quote : "It is vital that the Ombudsman should not turn into a local authority inspectorate because of an imbalance between these two functions". On this point I would like to put before you that according to my authorities, our Ombudsman in particular, the meaning of this phrase is not quite clear and it runs the risk to create wrong impressions. Therefore our suggestion would be that this phrase be struck out of the text.

I remain of course at your disposal and at Professor Marcou's disposal for any contact and co-operation on the matter.

I would like to kindly ask you, Mr. Chairman, that my statement be registered in the Records of this Meeting.

Thank you Mr. Chairman.



## SISEMINISTEERIUM

The Council of Europe  
Committee of Ministers

28.02.2001 nr. 5.4-17/185

**Explanatory Memorandum to survey on the progress  
achieved within the framework of the monitoring procedure  
on local democracy in Estonia by Professor Gerard Marcou**

(Compliance with Member States' commitments  
Committee of Ministers Declaration of 10 November 1994)

Appreciating the effort made by Professor Gerard Marcou in undertaking the country-by-country survey on the progress achieved in developing local democracy, we would hereby like to present our comments and remarks on the conclusions made by Professor Marcou on the development of local democracy in Estonia.

Unfortunately we cannot agree with the researcher's claim that the local government policy in Estonia does not comply with the European Charter of Local Self-Government. We are afraid that the researcher has, in part, incorrectly interpreted the changes planned to be made in the local government system. In connection with preparations for public administrative reform, the Ministry of Internal Affairs of the Republic of Estonia completed preparation of the Strategy on Local Government Administrative Reform on 1 November 2000, in which many of the earlier principles are elaborated and improved, and therefore some of the researcher's remarks are no longer relevant.

The following are our explanations presented according to the statements made by Professor Marcou on the results of the survey on Estonia:

**1. Appointment of the local council secretary by the government rather by the mayor**

It may be that the terms have been incorrectly translated or interpreted, but presently there are rural municipality and city secretaries, not local council secretaries in the service of the local government. According to the Local Government Organisation Act, a rural municipality or city secretary is appointed to and released from office by the rural municipality or city mayor, a rural municipality or city secretary manages the activities of the rural municipality or city office, they shall be qualified as jurists or hold a certificate of compliance with the professional qualification requirements established by the Government of the Republic.

No principal changes are planned to be made in the status of the rural municipality or city secretary.

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## **2. At least some members of the executive are chosen from outside the council**

This principle has already changed – the Local Government Administrative Reform Strategy includes the proposal that the government is formed of council members proportionately to the representation of political parties in the council.

## **3. The politicisation of local councils**

The changes presently planned provide the opportunity for not only nationally registered political parties, but also for persons who do not belong to any parties, including European Union citizens residing in Estonia, to file their candidacy at local elections.

The need for politicisation of local councils arises from the fact that in rural municipalities and towns, councils are mainly composed of the election coalitions of citizens that have no specific political responsibility to their electors.

Today's democracy is a democracy of political parties, which is why the changing of democracy into a democracy of political parties should also be favoured on the local level. Election on the basis of the election programmes of parties makes the choice easier for electors and gives them an opportunity to affect the division of different parties.

As Mr. Marcou has referred to shortcomings in the organisational aspect of local governments, it should be stressed that the changes planned to be made in the organisational structure of local governments are chiefly based on the principle that political and administrative management should be more distinguished from each other. This is because in the present management model, the local government administration is directly accountable to the rural municipality or city government, thus over-politicising the local executive power. The status of city mayors and rural municipality mayors is rendered unduly important, forgetting that they are only the heads of a city or rural municipality government and have no right to pass external legislation or represent the city council as the highest body of the local government unit in exercising its competence without a special authorisation. The executive power (apparatus) currently prevails in the Estonian local governments, which is why the council as the people's representation in the core of the local government has not achieved the position it should have in a democratic state.

To solve the situation, the local government management structure is planned to be changed as follows:

- a) **Political bodies** of the local government – *the council and the government*, are headed by the rural municipality mayor or city mayor (*former chairman of council*).
- b) The council forms, at the proposal of the rural municipality mayor/city mayor, the government of the council members proportionately to the representation of political parties in the council.
- c) The rural municipality and city administration or executive apparatus is headed by the rural municipality or city director, whose term of office does not depend on the term of authorities of the council. The rural municipality or city director is appointed to office by the council at the proposal of the rural municipality or city mayor.

#### **4. The transformation of regional associations into bodies with public functions leads to suppression of local authorities' freedom of associations**

The reorganisation of public administration on the regional level depends on the results of administrative-territorial reform of local governments. Therefore, the nature, the legal status and the lawful tasks of regional local government associations are not finally decided yet.

The more radical the change brought about by administrative-territorial reorganisation of local governments, the fewer the tasks to be jointly performed, generally, and thus the lesser the need to regulate the joint activities of local governments by law.

The granting of a public law status to regional local government associations does not deprive the local governments of the possibility to form voluntary associations – this right is guaranteed by the Constitution.

#### **5. Distribution of legality-monitoring functions between the Governor and Chancellor of Justice is not clear**

Unfortunately, this statement is not understandable.

The competence of the **Chancellor of Justice** is set out in the Constitution, according to which the Chancellor of Justice is an officer who is independent in his activities and monitors the compliance of local government legislation of general application with the Constitution and the laws.

The competence of the **county governor** in monitoring the activities of local governments is provided in the Government of the Republic Act. According to the Act, the County Governor exercises supervision over the **legality of legislation of specific application** of local governments and councils of the given County and over the **legality and purposefulness of the use of state assets** in the use or control of local governments. A County Governor or an official authorised by the Governor also has the right to check the performance of state functions assigned to local governments by law or assumed by local governments by an administration contract.

In our opinion, such a division of tasks fully complies with the principles of Article 8 of the Charter of Local Self-Government.

**6. As regards the researcher's statement that the conditions for recruiting local government officers are disorderly and do not guarantee the neutrality of the public service, we would like to receive an explanation and justification of the bases of such a conclusion.**

**7. It is surprising that all local taxes are optional, with the result that they are almost never collected**

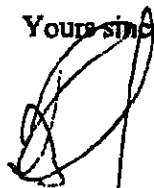
Clause 3 of Article 9 of the European Charter of Local Self-Government provides for the right of local governments to impose local taxes and to determine their rates. Local taxes, the procedure for their imposition and the requirements for local taxes are presently provided in the Local Taxes Act. According to the Act, local government councils are the sole bodies competent to impose local taxes. We believe that this principle is in accordance with the Charter.

**8. There seems to be no reliable provision for informing citizens and publishing decisions**

The procedure for publishing local government council legislation is provided in the Local Government Organisation Act. Informing the public is further regulated by the Public Information Act that entered into force on 1 January this year and that guarantees the public and every person access to the information intended for public use and creates possibilities for public control of the performance of public duties.

In conclusion, we would like to stress that the entire local government system as a whole is presently the subject of discussion and soon to be reformed. That is why we believe that Estonia has a great opportunity to remedy the shortcomings identified during the last ten years, which have been pointed out both in the EU Commission progress reports and the EC recommendations and proposals, and to improve the administrative capacity of local governments as a whole.

Yours sincerely



Deiv Rahumägi

Deputy Secretary General

APPENDIX VI**Statement  
of the Ministry of Foreign Affairs of Georgia**

On 10 March, 2001 the Abkhaz separatist regime plans to hold the so-called local self-government elections, which can only be termed as yet another serial provocation.

The Ministry of Foreign Affairs of Georgia is authorized to declare that any kind of "elections" held by the separatist regime lacks legitimacy, is illegal and invalid.

Similar actions in the past, including the so-called referendum and "presidential elections" held on 3 October, 1999 on the territory of Abkhazia, Georgia were manifestly assessed as illegal and unacceptable by the UN member states, the UN Security Council, the Council of Europe, the European Union, the OSCE and the Inter-Parliamentary Assembly of the CIS.

By taking the decision to hold the so-called local self-government elections on the territory where more than half of the native population is expelled, the separatist regime of Abkhazia, Georgia demonstratively contradicts the values of international community. And this is taking place when fundamental principles of international law and universally recognized norms of human rights are regularly violated by the Abkhaz separatist regime.

The decision on "elections" is ever more disconcerting, as it comes on the eve of the Yalta meeting between the Georgian and Abkhaz sides on confidence building measures planned for March.

Such unlawful actions by the Abkhaz side create additional obstacles to the peace process, destructively confront the goodwill of the Government of Georgia and undermine the efforts of the international community aimed at comprehensive peaceful resolution of the conflict, with full respect for the sovereignty and territorial integrity of Georgia.

Tbilisi, 27 February, 2001

**Information  
about state of development of local democracy in Ukraine**

**1. The legal framework of local self-government and its recent developments.**

Local self-government is admitted and guaranteed in Ukraine, provided by the Article 7 of the Constitution of Ukraine.

Article 140 of the Constitution of Ukraine defines, that local self-government is the right of the territorial community – inhabitants of a village or voluntarily association of inhabitants of several villages into the village community, the settlement and the city – to autonomously take decisions on local matters within the field provided by the Constitution and the laws of Ukraine.

Particularities of local self-government in the cities of Kyiv and Sevastopol are determined by the special laws of Ukraine.

Local self-government is executed by the territorial community in the way, determined by the law, both directly and through the local self-government authorities: village councils, settlement councils, city councils and their executive organs.

Regional and oblast councils are the local self-government authorities, which represent joint interests of the territorial communities of the villages, the settlements and the cities.

The issue of organization of administration in the districts of the cities belongs to the competence of the city councils.

The basic legislation in the sphere of local self-government includes the Constitution of Ukraine, the laws of Ukraine "On Local Self-Government in Ukraine", "On elections of deputies to the local councils and chairpersons of the villages, the settlements and the cities", "On the Capital of Ukraine – the Hero-City of Kyiv", the European Charter of Local Self-Government, the Law of Ukraine "On the organs of self-organization of population" (the latter has not entered into force so far).

The Law of Ukraine "On Local Self-Government in Ukraine" defines the system and guarantees of local self-government in Ukraine, as well as the fundamentals of organization and activities, the legal status and responsibilities of the local self-government authorities and officials.

The Article 3 of the above Law of Ukraine provides, that the citizens of Ukraine execute their right to participate in local self-government within their respective territorial communities.

In accordance with the Constitution of Ukraine, the Law of Ukraine "On Local Self-Government in Ukraine" and other laws, the Law of Ukraine "On elections of deputies to the local councils and chairpersons of the villages, the settlements and the cities" determines the principles, peculiarities and order for organization and holding the elections of the deputies to the village', the settlement', the city' and the district-in-the city', regional and oblast councils, as well as chairpersons of the villages, the settlements and the cities.

The Law of Ukraine "On the Capital of Ukraine – the Hero-City of Kyiv" defines the special status of the city of Kyiv as the capital of Ukraine, as well as the particularities in

execution of the executive power and local self-government in the city as provided by the Constitution of Ukraine and the laws of Ukraine.

In accordance with the item 12 of the Opinion № 190 (1995) of the Parliamentary Assembly of the Council of Europe, Ukraine has taken the obligation to sign and ratify the European Charter of Local Self-Government within one year period since the date of becoming the member of the Council of Europe.

On 15 July, 1997 the Verkhovna Rada of Ukraine has adopted the Law of Ukraine "On ratification of the European Charter of Local Self-Government".

In the Law of Ukraine "On the organs for self-organization of the population" (the latter has not entered into force so far) it is suggested to define the legal status of an organ for self-organization of the population as one of the forms of participation of citizens, who temporary or permanently live at respective territory of a village, a settlement or a city, in taking decisions on the matters of local self-government and satisfaction in cultural, daily and other needs of population, which are specified by the Constitution of Ukraine and the legislation of Ukraine as such, that fall under competence of local self-government.

At present on the agenda there appeared the issue of creating the necessary legal base to ensure mutual representation of interests of center and regions, decentralization and division of competencies between the central and local organs of executive power and local self-government authorities, as well as strengthening financial and material basis of local self-government.

The Ministry for Justice of Ukraine in co-operation with other central executive power authorities elaborate at present the draft laws of Ukraine "On amending the Law of Ukraine "On Local Self-Government in Ukraine"" and "On amending the Law of Ukraine "On Local State Administrations"". These activities are carried out in accordance with the list of Activities on implementation in 2000 of the tasks, stipulated by the Address of the President of Ukraine to the Verkhovna Rada of Ukraine and the Program of Activities of the Cabinet of Ministers of Ukraine, which were adopted by the Resolution of the Cabinet of Ministers of Ukraine № 747 of 29 May, 2000, and are aimed at improvement of socio-economic situation and elaboration of effective mechanisms for control over execution by local executive power organs and local self-government authorities the competencies, delegated to them.

All this calls for the necessity of introducing through state regional policy a whole complex of measures, aimed at raising the level of well-being of the population by means of raising the efficiency of utilization of the economic potential, deepening the processes of market transformation, optimization of management, strengthening of power authorities on one hand, and strengthening organizational, legal, financial and economic basis of functioning of local self-government on another.

With this aim, following the initiative of the President of Ukraine, the Cabinet of Ministers of Ukraine elaborates the draft Concept of regional policy of Ukraine.

**2. Territorial organization and distribution of competencies between the different tiers of government**

Under Article 6 of the Constitution of Ukraine the state power in Ukraine is executed on the basis of its division into legislative power, executive power and the court.

The only organ of legislative power in Ukraine is the Parliament – the Verkhovna Rada of Ukraine (Article 75 of the Constitution of Ukraine).

Part 1 of the Article 113 of the Constitution of Ukraine defines, that the Cabinet of Ministers of Ukraine is the highest organ in the system of executive power authorities.

The ministries, the state committees (state services) and central executive power authorities with special status form the system of central executive power authorities of Ukraine.

Local state administrations exercise the executive power in the oblasts (regions) and districts, as well as in the cities of Kyiv and Sevastopol (part one of the Article 118 of the Constitution of Ukraine).

The peculiarities of executive power in the cities of Kyiv and Sevastopol are specified by separate laws of Ukraine (part two of the Article 118 of the Constitution of Ukraine).

Under part one and part three of the Article 124 of the Constitution of Ukraine justice in Ukraine is exercised exclusively by the courts. Delegation of court powers to other organs or officials, or taking over such powers by other organs or officials is not permitted.

Legal proceedings are conducted by the Constitutional Court of Ukraine and by the courts of general jurisdiction.

**3) Local property and finance**

Article 41 of the Constitution of Ukraine stipulates, that the following kinds of property exist in Ukraine: the state property, the communal property and the private property.

Under Article 142 of the Constitution of Ukraine and part three of the Article 16 of the Law of Ukraine "On Local Self-Government in Ukraine" the material and financial basis of local self-government comprises movable property and real estate, revenues of local budgets, other funds, land and natural resources, which belong to the property of territorial communities of villages, settlements, cities and districts-in-the cities, as well as objects of their common property, which are administered by district and oblast (regional) councils.

Territorial communities of villages, settlements and cities may amalgamate on a treaty basis the objects of communal property and budget allocations to accomplish joint projects or to ensure joint financing of the communal enterprises, organizations and institutions, and may establish relevant organs and services required for their functioning.

The state participates in forming the revenues of local self-government budgets and financially supports local self-government. The expenditures of local self-government authorities, which occur as a consequence of the decisions, taken by the state authorities, are reimbursed by the state.

Article 143 of the Constitution of Ukraine provides, that territorial communities of a village, a settlement or a city directly or through the local self-government authorities, established by them, administer the property, which belongs to the communal property, approve the budgets of respective administrative-territorial units and control execution of the budgets, adopt local taxes and duties within provisions of the law, take decisions on other matters of local importance, which under the law belong to their competency.

Oblast and district councils approve district and oblast budgets, which are formed from at the expense of state budget for their further redistribution among the territorial communities or for implementation of joint projects, as well as at the expense of financial resources, allocated on a treaty basis from the local budgets for implementation of joint social, economic and cultural programs; they also control fulfillment of the budgets, take decisions on other matters, which belong to their competence under the law.

Some responsibilities of the executive authorities may be delegated to local self-government authorities by law. The state finances execution of these responsibilities in full scope at the expense of the State Budget of Ukraine or by means of transfer to the local budget of some state taxes in compliance with the law regulations, as well as passes to local self-government authorities appropriate objects of state property.

Local self-government authorities are accountable to the appropriate executive authorities in the matters of their executing the responsibilities of the executive authorities.

Article 1, paragraph 15 of the Law of Ukraine "On Local Self-Government in Ukraine" defines the right to communal property as the right of the territorial community to possess, to reasonably, economically and effectively utilize and manage on its own and in its interests the property, that belongs to it, both directly and through the local self-government authorities.

The rights of the subject of communal property are implemented by the respective councils on behalf of and in the interests of the territorial communities (Article 15, part 5 of the Law of Ukraine "On Local Self-Government in Ukraine").

Article 60 of the above law provides, that the territorial communities of the villages, the settlements, the cities and districts-in-the cities possess the right to communal property in respect of movables and real estate, revenues of local budgets, other funds, land, natural resources, enterprises, institutions and organizations, including banks and insurance agencies, as well as in respect of pension funds, share of the property of the enterprises, dwelling houses, office premises, institutions for culture, education, sports, health, science, social services and other property, and right to property, movables and real estate, which are specified by the law as the objects of right to communal property, and funds, received as a result of their alienation.

The grounds for obtaining the right of communal property are: transfer of the property free of charge to the territorial community by the state, by other subjects of the right of property, as well as transfer of the right to property, establishing and acquiring the property by the local self-government authorities in accordance with the provisions of the law.

Territorial communities of villages, settlements, cities and districts-in-the cities directly or through the local self-government authorities may unite, on the treaty basis and on the basis of the right to common property, the objects of the right to communal property, as well as funds of the local budgets allocated for implementation of joint projects or for joint financing the communal enterprises, institutions and organizations, as well as may establish respective organs and services to ensure their proper functioning.

District and oblast (regional) councils, which act on behalf of the territorial communities of villages, settlements and cities, administer the objects of their common property that satisfy the common needs of the territorial communities.

Local self-government authorities on behalf of and in the interests of the territorial communities and in accordance with the provisions of the law execute their rights in respect of possession, utilization and administering the objects of communal property right, including dealing in with the property; they may also pass the objects of communal property right in permanent or temporary ownership to the juridical or physical persons, to lease them,

to sell and buy them, to use them as mortgage, to take decisions on their alienation, to determine in the agreements and contracts the conditions of utilization and financing of the objects, which are privatized or passed for utilization and lease.

The respective council determines the expediency, order and conditions of alienation of the objects of communal property right. The revenues, received from alienation of the objects of communal property right are placed in the respective local budgets and used for financing the activities, which are stipulated by the development budgets.

The operations with property, which are conducted by local self-government authorities in respect of the objects of communal property right, should not deteriorate the economic basis of local self-government, they should not reduce the scope or worsen the quality of services, rendered to the population.

The right to communal property of the territorial community is protected by the law on equal conditions with the rights to property of other subjects. The objects of communal property right may not be withdrawn from the territorial community and may not be transferred to other subjects of property right without direct consent of the territorial community or without relevant decision by the council or by another organ, authorized by the council, except the cases, specified by the law.

The village, settlement, city, district-in-the cities (in case of their establishment ) councils have the right:

- 1) to initiate the proposals in respect of passing or selling into communal property of respective territorial communities of the enterprises, institutions and organizations, their structural units and other objects, which belong to state or other forms of property, in case of their great importance for communal, daily, social and cultural needs of the territorial communities;
- 2) to acquire in priority order into communal property offices, buildings and other objects, which are located on respective territory, in cases when they may be used for providing of communal, daily, social and cultural needs of the territorial communities;
- 3) to possess communal property objects beyond the boundaries of their respective administrative territories.

Under Article 61 of the Law of Ukraine "On Local Self-Government in Ukraine" local self-government authorities of villages, settlements, cities, districts-in-the cities (in case of their establishment) are free to independently draft, adopt and execute respective local budgets in compliance with the above law and the law on budget system.

District and oblast (regional) councils adopt district and oblast budgets, which are drafted and executed by respective district and oblast state administrations in compliance with the above law and the law on budget system.

Independence of local budgets is guaranteed by their own revenues and revenues, which are secured for them on a permanent basis by the law, as well as by the right to independently determine directions for application of financial resources of local budgets as provided by the law.

Interference of state authorities into the process of drafting, adopting and executing local budgets is not permitted, except the cases specified by the above law and other laws.

Article 62 of the above law provides, that the state supports local self-government in terms of finance, participates in forming revenues of local budgets, controls legality, expediency and efficiency of utilization of financial resources and their appropriate accountancy.

Apart from this, as provided by Article 67 of the above law of Ukraine, the state finances in full scope executing by local self-government authorities responsibilities of executive power authorities, delegated to them under the law. Financial resources, which are necessary for executing by local self-government authorities these competencies are allocated annually in the Law of Ukraine on State Budget of Ukraine.

Decisions of state power authorities, which result in additional expenditures to be borne by local self-government authorities, are accompanied on compulsory basis by transfer to local self-government authorities the financial resources required. The above mentioned decisions are fulfilled by local self-government authorities within the scope of financial resources transferred. The expenditures of local self-government authorities, which has occurred as a consequence of the decisions of state power authorities without prior transfer of financial resources required, are reimbursed by the state.

It is worth mentioning, that the Ministry of Justice has participated in drafting the laws of Ukraine "On delegated competencies" and "On delegation to the Autonomous Republic of Crimea of state functions and competencies".

Item 10, Part IV "Final and transitional provisions" of the Law of Ukraine "On Local Self-Government in Ukraine" stipulates that, after this law enters into force the property, which before adopting the Constitution of Ukraine has been transferred by the state into communal property of administrative - territorial units in compliance with the law and property, which have been acquired by the administrative - territorial units on other legal grounds, except the property which was alienated in compliance with the law, is the communal property of respective territorial communities of villages, settlements and cities. The property, which was transferred into communal property of oblasts (regions) and districts, as well as property, which was acquired on other legal grounds, is the common property of territorial communities of villages, settlements and cities. This property, as provided by the Constitution of Ukraine, is administered by district and oblast (regional) councils or by organs, which were authorized by them to act in this capacity. Alienation of above property can be done only under decision of the owner or of an organ, authorized by him to do so. On proposal of village, settlement, city councils, the district and oblast (regional) councils have to adopt decisions on transfer into communal property of respective territorial communities those objects of common property of the territorial communities, which are located on their territory and provide services to satisfy collective needs of these territorial communities exclusively. The legal status of common property of the territorial communities is determined by the law.

Despite adoption of the Law of Ukraine "On Local Self-Government in Ukraine", which was aimed at solving the problems in connection with establishment and functioning of local self-government authorities on the principles of the Constitution of Ukraine and in accordance with its provisions, regretfully, there still exist problems, which, which stay beyond the framework of the above law and which require urgent solving.

Among them, in particular, are the following:

- the issues of legal basis of administering and management of the objects of communal property and common property of the territorial communities of villages, settlements, cities; the issues of utilization by local executive authorities of the property, which belongs to the communal property, and division of functions in administering these objects between councils and state administrations.

The most important problems, which arise in connection with implementation by the territorial communities and organs, authorized by them, the responsibilities on administering the communal property, have to be regulated by the draft law of Ukraine "On amendments to

the Law of Ukraine "On Local Self-Government in Ukraine", which is drafted by the Ministry of Justice of Ukraine.

#### 4) **Relationship between central government and local authorities**

Article 19 of the Law of Ukraine "On local self-government in Ukraine" provides, that the representative organ of local self-government may approve the statute of the territorial community of the village, the settlement, the city on the basis of the Constitution of Ukraine and within the framework of the above Law in order to take into account historical, national, cultural, social, economic and other peculiarities in local self-government.

The statute of the territorial community is subject to state registration in the organs of the Ministry of Justice of Ukraine.

Under information, provided by the Foundation for local self-government of Ukraine, at present there exist certain scientific and methodical works on the above issue. In particular, there have been drafted the Model statute of the territorial community; scientific and methodical recommendations "Statute of the territorial community. The problems of its elaboration, adopting and implementation in practice of local self-government". Kyiv-1999, and others.

Part six, Article 140 of the Constitution of Ukraine provides, that village, settlement and city councils may establish, on the initiative of inhabitants, organs of self-organization of the population of house, street, block, as well as other organs of self-organization of the population, and transfer to them part of own competence, finances and property of respective councils.

With this aim the Verkhovna Rada of Ukraine has adopted the Law of Ukraine "On organs of self-organization of population" (has not entered into force so far).

Control over execution by local self-government authorities of competencies, which were delegated to them by the organs of executive power, as provided by the "Regulations on control over execution by local self-government authorities of competencies which were delegated them by the organs of executive power" adopted by the Decree of the Cabinet of Ministers of Ukraine № 339 dated 9 March 1999, is to be done by respective local state administrations and the Council of Ministers of the Autonomous Republic of Crimea, and in some cases, specified by the legislation, -- by the ministries and other central organs of executive power and by their territorial branches.

Control is executed by means of analysis of acts, adopted by local self-government authorities, as well as through submitting by local self-government authorities information on execution by them the delegated competencies of organs of executive power, carrying out checks over activities of executive organs of village, settlement and city councils.

Under Article 124, part 2, of the Constitution of Ukraine the jurisdiction of the courts is extended over all legal relationships, which occur in the country.

Under Article 145 of the Constitution of Ukraine the rights of local self-government are protected through the court proceedings.

Apart from this, under Article 4 of the Law of Ukraine "On local self-government in Ukraine", protection of rights of local self-government in the court is one of the principles of local self-government in Ukraine.

The above Law, and in particular - Article 71 of the Law, contains guaranties, granted to local self-government, its organs and officials.

Thus, under the above article, the territorial communities, organs and officials of local self-government are independent in execution the competencies, delegated to them.

Organs of executive power, their officials have no right to interfere in the activities of local self-government authorities, carried out within the legal framework, as well as to take decisions on the matters, which under the Constitution of Ukraine, the above Law and other laws fall under competence of local self-government authorities and their officials except the cases when these authorities execute powers, which were delegated to them, and other cases specified by the law.

In cases when the local state administration considers the matters, which are sensitive for local self-government, the local state administration is obliged to inform about this respective local self-government authorities and their officials.

Local self-government authorities and their officials have the right to appeal to the court in respect of recognition as illegal of such acts, adopted by local executive power organs, other local self-government authorities, enterprises, institutions and organizations, which restrict the rights of territorial communities, competencies of local self-government authorities and their officials.

#### **5) Status of local elected representatives and status of local authority staff**

Article 38 of the Constitution of Ukraine provides, that citizens have the right to participate in state administration, in the all-Ukrainian and local referenda, to freely elect and be elected to state power authorities and local self-government authorities:

The citizens have equal rights in respect of their admission to state service, as well as to service in local self-government authorities.

Under Article 141 of the Constitution of Ukraine village councils, settlement councils and city councils consist of the councilors, which are elected by the inhabitants of the village, settlement or city for four years period on the basis of general, equal and direct election right by means of secret ballot.

The territorial communities elect for the period of four years on the basis of general, equal and direct election right and by means of secret ballot the village chairman, the settlement chairman or the city chairman respectively, who acts as the head of the executive organ of the council and chairs the meetings of the councils.

Under the parts three and four of the Article 141 of the Constitution of Ukraine the status of chairmen, councilors and executive organs of the council, as well as their competencies, order of their establishing, reorganization and liquidation are determined by the law.

In accordance with part one of the Article 1 of the Law of Ukraine "On elections of the deputies of local councils as well as village, settlement and city chairmen" the elections of the deputies of village, settlement, city, district-in-the city, district and oblast (regional) councils, as well as village, settlement and city chairmen are free and are held on the basis of general, equal and direct electoral right guaranteed by the Constitution of the Ukraine and the above Law, by means of secret ballot. The councilors of local councils and village, settlement and city chairmen are elected for the period of four years.

The chairmen of the district council and the chairmen of the oblast (region) council are elected by the respective council, and head the executive body of the council.

Under item 5, Chapter V "Final and transitional provisions" of the law of Ukraine "On Local Self-Government in Ukraine", the Law of Ukraine "On State Service" also covers those officials, who work in local self-government authorities. These officials are considered to be equal in their post to appropriate category of posts of state servants, unless another provision is provided by the legislation of Ukraine.

To improve the principals of local self-government, and following the instruction by the President of Ukraine and the Cabinet of Ministers of Ukraine, Main Directorate for State Service jointly with the ministries and other state organs concerned has elaborated the draft Law of Ukraine "On Service in Local Self-Government Authorities". The Verkhovna Rada (the Parliament) of Ukraine had passed the above law in the first hearing.

The draft Law is elaborated in such a way, which will permit to avoid considerable differences in the status of local self-government authorities' officials and the status of state servants, in particular, - in such issues as limitations for assuming the post and passing service, salaries, social guarantees etc., and thus it is aimed at preventing confronting each other local self-government authorities officials and local executive authorities officials.

Following the directives of the Decree by the President of Ukraine "On the strategy of reforming the system of state service in Ukraine", there have been elaborated the Activities on implementation of the strategy in 2000-2001, which were approved by the Decree of the President of Ukraine of 26 July 2000. In these Activities it is planned to accomplish, inter alia, the following: improvement the all-national system of training, retraining and raising the level of qualification of the state servants, including the staff of local self-government authorities. Among the activities - drafting the comprehensive program of training of state servants; holding accreditation of the educational institutions, which train, retrain or raise the level of qualification of the state servants; elaboration of state standards for training personnel in the sphere of "State administration" with due account of the international experience in the field; including in the draft State Budget and draft local budget compulsory state request for training, retraining and raising the level of qualification of state servants with due attention paid to allocating material, technical, financial resources required.

Highest education institutions in the sphere of local self-government, which ensure direct training of the specialists, play important role in the process of training. Among them - the Academy of State administration under the President of Ukraine, the Academy of Municipal Administration etc.

#### **6) Transparency of local administrations, efficiency of administrative action at local level and the quality of services provided or citizens**

The Article 1 of the Law of Ukraine "On Local State Administrations" provides, that the local state administration is a local organ of executive power and is an element of the system of state executive power bodies.

The local state administration within its competencies acts as an executive power over the territory of the appropriate administrative - territorial units and executes functions, delegated to it by the respective council. Under Article 119 of the Constitution of Ukraine and Article 2 of the Law of Ukraine "On Local State Administrations" the local state administrations within the boundaries of respective administrative - territorial units insure:

- 1) abide by the Constitution and the Laws of Ukraine, implementations of the decrees, issued by the President of Ukraine, the Cabinet of Ministers of Ukraine and other executive power authorities of the highest level;
- 2) law and order as well as insuring rights and freedoms of the citizens;
- 3) implementation of state and regional programs of social-economical and cultural development, the programs for environment protection, in the places of compact living of indigenous population and national minorities -implementation as well of the programs of their national and cultural development;
- 4) drafting and execution of appropriate budgets;

- 5) report on execution of appropriate budgets and programs;
- 6) co-operation with local self-government authorities;
- 7) execution of other competencies, delegated them by the state as well as by the respective councils.

Under Article 34 of the Law of Ukraine "On Local State Administrations" the local state administrations execute the competencies, which were delegated to them by respective oblast (regional) and district councils.

Delegating of competencies by the councils to the local state administrations is accompanied by transfer financial, material, technical and other resources, necessary for execution of such competencies.

The local state administrations are accountable to and controlled by the appropriate councils in respect of the delegated competencies.

Heads of the local state administrations report annually to respective councils on the issues of execution of the budget, implementation of programs on socio-economic and cultural development of the areas and execution of delegated competencies.

Oblast (regional) and district councils may express their distrust in respect of the head of respective local state administration, and on these grounds and with due account of the proposals made by the executive power organ of higher level, the President of Ukraine takes the decision and addresses the respective council with the grounded replay.

In case when distrust in respect of a head of the oblast (regional) or district state administration is expressed by two thirds majority of total members of respective council, the President of Ukraine accepts the resignation of the head of respective local state administration.

Article 119 (part eight) of the Constitution of Ukraine stipulates, that decisions, taken by the heads of local state administrations, which contradict to the Constitution and the Laws of Ukraine, as well as to other legislative acts of Ukraine may be in accordance with the law abolished by the President of Ukraine or by he head of local state administration of higher level.

Following the provisions of the National program on combating corruption, and pursuant to the instruction by the President of Ukraine a draft Code of conduct for state servants is being elaborated now to contribute to creating preconditions for strengthening reputation of state organs' staff and staff of local self-government authorities, for support of their honor and dignity, and lead to transparency in activities of the mentioned state organs, shall raise the efficiency of administrative activities and quality of services , rendered to the populations.

#### **7) Right of association (including at European level) and transfrontier co-operation**

The Article 15 of the Law of Ukraine "On Local Self-Government in Ukraine" provides, that local self-government authorities may unite their efforts in associations and other kinds of voluntary unions to ensure more effective fulfillment of their responsibilities, protection of rights and interests of the territorial communities. Such associations are subject to registration in accordance with the legislation in the organs of Ministry of Justice of Ukraine.

Local self-government authorities and their associations may join respective international associations, other voluntary unions of local self-government authorities.

Responsibilities of local self-government authorities may not be transferred to associations and other voluntary unions of local self-government authorities.

Ukraine has ratified the European Outline Convention on Transfrontier Co-operation Between Territorial Communities or Authorities (1993). In 1998 Ukraine has signed Protocol № 2 to the European Outline Convention on Transfrontier Co-operation Between Territorial Communities or Authorities concerning interterritorial co-operation.

**8) Participation of the population in the political process at local level**

People's will is expressed through elections, referendum and other forms of direct democracy (article 69 of the Constitution of Ukraine).

The right to vote at elections and referenda, as provided by Article 70 of the Constitution of Ukraine, have the citizens of Ukraine, who had celebrated 18 years by the date of holding the elections.

The citizens, with regard to whom the court has passed the verdict on their being incapacitated, have no right to vote.

Article 71 of the Constitution of Ukraine provides, that elections to state power organs and local self-government authorities are free and are being held on the basis of general, equal and direct election right by means of secret ballot.

Free expression of people's will is guaranteed to the voters.

No referenda are permitted on the draft laws on taxes, budget and amnesty (Article 74 of the Constitution of Ukraine).

It is worth mentioning, that under the Law of Ukraine "On local self-government in Ukraine" the territorial community is granted the right to will expression both directly – by means of different forms of direct democracy: local elections, local referenda (Article 7), general meetings (Article 8), local initiatives (Article 9), public hearings (Article 13), and by means of activities of representative organs of local self-government - the councils.

The Law of Ukraine "On All-Ukrainian and local referendum", as provided by Part XV, item 1 "Transitional provisions" of Constitution of Ukraine, is effective in that part, which do not contradict to the Constitution of Ukraine. The draft Law of Ukraine "On local referendum and other forms of expression of citizens' will" has been elaborated with the aim to improve the legal basis for expression by citizens of their will on local level.