

**25<sup>th</sup> SESSION**  
**Strasbourg, 29-31 October 2013**

**CG(25)8FINAL**  
31 October 2013

## **Local and regional democracy in Ukraine**

Monitoring Committee

Rapporteurs: Mr Marc COOLS, Belgium (L, ILDG)<sup>1</sup>;  
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### *Summary*

This is the second report on the state of local and regional democracy in Ukraine since 2001. The report highlights the initiatives taken by the government in view of a substantial territorial reform that are considered positive and the fact that local authorities have been represented in this process by their associations through the consultation procedure. It notes, however, that the law limits local authorities' autonomy of decision and management, that several cities, including the capital, have remained without a mayor for long periods of time, and that the financial autonomy of local authorities remains limited. The report also highlights the lack of a clear division of competences and administrative action between government departments and those of local authorities and, despite strong statements of intent made at the highest level of State for its implementation, the reform does not advance at the desired pace.

It is recommended that the Ukrainian authorities review their legislation in order to remove the restrictions on the powers of local authorities and enable them to fully exercise their competences. The authorities are encouraged to organise, in the shortest possible time, elections in the cities where the post of mayor is vacant. The recommendation underlines the need to strengthen the financial autonomy of local communities and to improve the equalisation system for the purposes of fairness and transparency. It invites the authorities to implement the reform in a timely manner. Finally, the recommendation calls on the Ukrainian authorities to ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

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<sup>1</sup>L: Chamber of Local Authorities / R: Chamber of Regions  
EPP/CCE: European People's Party Group in the Congress  
SOC: Socialist Group  
ILDG: Independent Liberal and Democratic Group  
ECR: European Conservatives and Reformists Group  
NR: Not registered

## Local and regional democracy in Ukraine

### RECOMMENDATION 348 (2013)<sup>2</sup>

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

a. Article 2, paragraph 1.b. of Statutory Resolution CM/Res(2011)2 of the Committee of Ministers relating to the Congress of Local and Regional Authorities of the Council of Europe, which stipulates that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of the above-mentioned Statutory Resolution CM/Res(2011)2, which stipulates that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. Resolution 307 (2010) REV2 on Procedures for monitoring the obligations and commitments entered into by the Council of Europe member states in respect of their ratification of the European Charter of Local Self-Government (ETS No.122);

d. Recommendation 219 (2007) on the status of capital cities, Recommendation 132 (2003) on municipal property in the light of the principles of the European Charter of Local Self-Government;

e. Resolution 299 (2010) of the Congress on Follow-up by the Congress of the Council of Europe Conference of Ministers responsible for Local and Regional Government (Utrecht, Netherlands, 16-17 November 2009), which states that the Congress will use the Council of Europe Reference Framework for Regional Democracy in its monitoring activities, as well as the reply made by the Committee of Ministers to Congress Recommendation 282 (2010) [CM/Cong(2011)Rec282final], encouraging the governments of member states to take account of the above mentioned Reference Framework in their policies and reforms;

f. the previous Recommendation 102 (2001) on local and regional democracy in Ukraine;

g. the explanatory memorandum [CG(25)8FINAL] on the situation of local and regional democracy in Ukraine, presented by Mr Marc Cools (Belgium, L, ILDG) and Mr Pascal Mangin (France, R, EPP/ECC) .

2. The Congress delegation carried out two official visits to Ukraine from 20 to 23 May 2012 and from 22 to 23 April 2013.<sup>3</sup>

3. The delegation would like to thank the Permanent Representation of Ukraine to the Council of Europe and the Ukrainian authorities at all levels of government, the associations of local and regional authorities, experts and all the persons with whom discussions took place, for their interest in the Congress’s work and their co-operation at different stages of the monitoring procedure and the information conveyed to the delegation.

4. The Congress notes that:

a. Ukraine signed the European Charter of Local Self-Government (ETS No. 122, hereafter “the Charter”) on 6 November 1996 and ratified it, all provisions included on 11 September 1997, with entry into force on 1 January 1998;

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<sup>2</sup> Debated and adopted by the Congress on 31 October 2013, 3<sup>rd</sup> Sitting (see Document [CG\(25\)8FINAL](#) explanatory memorandum) rapporteurs: Marc Cools, Belgium (L, ILDG) and Pascal Mangin, France (R, EPP/CCE).

<sup>3</sup>The rapporteurs were assisted by Mr Bernd Semmelroggen, consultant and member of the Group of Independent Experts on the European Charter of Local Self-Government, and by Ms Sedef Cankoçak, Co-Secretary to the Monitoring Committee of the Congress.

*b.* Ukraine signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) on 20 October 2011 but has not yet ratified it.

5. The Congress welcomes:

*a.* the initiatives taken by the government in view of a substantial territorial reform and the fact that local authorities have been represented in this process by their associations through the consultation mechanism as well as the adoption of the "Strategy for Regional Development until 2015" by the government ;

*b.* the adoption of the "Law on Associations of Local Authorities" of 16 April 2009 which defines the legal basis for the organisation and activities of local government associations and their voluntary union as well as their interaction with central and local authorities;

*c.* the joint action of the national Ukrainian associations within their "Congress of Local and Regional Authorities of Ukraine";

*d.* the declarations made by the President of Ukraine on 28 March and 6 June 2013, in which he states that local government reform is one of the most urgent reforms that the country should carry out ;

*e.* the creation of co-ordination and consultation instruments such as the "Constitutional Assembly", which brings together representatives of political parties and civil society to develop proposals for the changes to be made to the Constitution of Ukraine, and the "Council of Regions" which aims to improve relations between the state governments and local authorities;

*f.* the work of the Constitutional Assembly on the "Amending Motion on Chapter XI - Local Autonomy – of the Constitution of Ukraine" presented to the Assembly at its meeting of 21 June 2013;

*g.* the ratification by Ukraine of Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings.

6. The Congress regrets however:

*a.* the legislation that limits the local authorities' ability to take decisions and manage their own affairs to "matters of local importance" and the fact that local authorities cannot fully exercise their competences on all matters that concern them, which poses a problem with regard to Articles 3 and 4 of the Charter;

*b.* that several towns and cities, including the capital, have remained without an elected mayor for long periods owing to a gap in the electoral law, which undermines the exercise of local self-government in these towns and cities, in particular in the light of Article 7 para. 1 of the Charter;

*c.* the limits put on local governments' financial autonomy by the restrictions on the system of inter-budgetary relations, as well as the insufficient concomitant financing of delegated competences, that transparency is not always guaranteed, notably in the distribution of subsidies and transfers and the complexity of the equalisation formula which complicates its application to the regions;

*d.* the absence of a clear division of powers and administrative activities between central government administration and local and regional authorities, which may give rise to overlapping or duplication in the exercise of powers and cause interference from the central level (in the person of the Head of the Administration) in the activities of local authorities and to non-compliance with the provisions of Article 8 of the Charter;

e. the rural exodus which has been the cause of a demographic decline and difficulties in maintaining local economic vitality in many municipalities, and a recentralisation of the competences of small towns by the allocation of these powers, initially granted to local authorities, to the State;

f. the slow pace of the reform despite the strong statements made at the highest level of the State, and the new draft laws recentralising competences at the central level in spite of the aims of the reform.

7. In the light of the above, the Congress recommends that the Committee of Ministers invite the Ukrainian authorities to take into consideration the following recommendations:

a. reinforce subsidiarity by granting local authorities competence for a substantial share of public affairs and increase the capacity of local authorities to act, by promoting voluntary amalgamations between local authorities in the manner to be specified by the central authorities, such as, for example, mergers and inter-municipal co-operation;

b. organise, in the shortest possible time, elections for mayors in the cities where this post has been vacant for a long time, and in particular in the capital city of Kyiv;

c. reinforce the financial autonomy of local authorities and improve the equalisation system, providing a fair and transparent redistribution of funds, based on clear criteria and objectives, by including it in the reform agenda to ensure conformity with Article 9 of the Charter ;

d. transfer the competences of the administrations in districts and regions to elected representatives in order to establish an administration under their responsibility;

e. develop specific strategies, notably by transferring competences to the local level, aimed at revitalising the periurban and rural areas exposed to demographic, economic and social decline, and involve local authorities in these geographical areas in the development of these strategies by the central government authorities;

f. implement the reform in a timely manner by adopting legislation based on the "Amending Motion on Chapter XI of the Constitution of Ukraine", presented at the meeting of the Constitutional Assembly on 21 June 2013 and, if necessary, by a revision of the Constitution;

g. ratify, in the near future, the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), already signed by Ukraine on 20 October 2011, particularly in order to strengthen public access to locally important planning documents.

# Local and regional democracy in Ukraine

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## 1. Introduction: aim and scope of visit, terms of reference

1. In accordance with Article 2 of Statutory Resolution CM/Res(2011)2 of the Committee of Ministers, the Congress of Local and Regional Authorities of the Council of Europe (hereinafter "the Congress") regularly prepares reports on the state of local and regional democracy in the member states and candidate countries. The present report on local and regional democracy in Ukraine follows on from Recommendation 102 (2001) adopted in November 2001. This new report also forms part of a series of Congress activities focusing on the development of the local and regional level in Ukraine.<sup>4</sup>

2. Ukraine joined the Council of Europe on 9 November 1995 and signed and ratified the European Charter of Local Self-Government (CETS no. 122, hereinafter "the Charter") on 6 November 1996 and 11 September 1997 respectively. The Charter entered into force in respect of that country on 1 January 1998; no declaration or reservation was made.

3. Ukraine acceded to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (CETS no. 106) on 21 September 1993. The Outline Convention entered into force on 22 December 1993. On 4 November 2004 Ukraine ratified the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (CETS no. 159), which entered into force on 5 February 2005. It signed (on 20 October 2011) but has not yet ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS no. 207). The national authorities informed the delegation that the ratification procedure might be relaunched during the current term of the Parliament (the *Verhovna Rada*).

4. The previous recommendation on local and regional democracy in Ukraine was adopted by the Congress in 2001 (Recommendation 102 (2001)).

5. Two visits were made by a Congress delegation to Ukraine from 20 to 23 May 2012 and from 22 to 23 April 2013, to examine the situation of local and regional democracy in that country in the light of the Charter. The Monitoring Committee appointed Mr Fabio Pellegrini (Italy, L, SOC) and Mr Pascal Mangin (France, R, EPP/CCE) as co-rapporteurs for local and regional democracy. After Mr Pellegrini's departure from the Congress in autumn 2012, Mr Marc Cools (Belgium, L, ILDG) was appointed Congress rapporteur for local democracy. The rapporteurs were assisted by Mr Bernd Semmelroggen, consultant and member of the Group of independent experts on the European Charter of Local Self-Government, and by a member of the Congress secretariat.

6. During those two visits, the Congress delegation met representatives of the associations of local and regional authorities, mayors and municipal and regional councillors, representatives of the authorities of the Autonomous Republic of Crimea and also members of Simferopol City Council. They took part in meetings with representatives of the Ukrainian Parliament (the *Verhovna Rada*), the presidential administration, the government, ministries and other high Ukrainian institutions. The detailed programmes of the visits are appended to the present report.

7. The rapporteurs wish to thank the permanent representation of Ukraine to the Council of Europe as well as all the talking partners met during these visits for their availability and the information they kindly provided to the delegation. They also thank the Ukrainian delegation to the Congress and the three associations of local and regional authorities, which contributed to the organisation and smooth running of the visits.

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<sup>4</sup> CGBUR(3)76 of 11 February 1997, Report on the situation of local self-government in Ukraine (11 February 1997); CG(5)6 Part II E of 19 May 1998, Report on the situation of local and regional democracy in Ukraine, Resolution 68 (1998)1 on local and regional democracy in Ukraine, Recommendation 48 (1998)1 on local and regional democracy in Ukraine, CGBUR(7)95 of 8 December 2000, Report of the CLRAE Rapporteur group on Ukraine, CG/BUR(7)73 of 15 January 2001, Report of the CLRAE Rapporteur group on Ukraine (Visit to Kyiv, 6-8 December 2000), CG(8)22 Part II rev. of 21 November 2001, Report on the situation of local and regional democracy in Ukraine; Congress Resolution 123 (2001) of 9 November 2001, on local and regional democracy in Ukraine, Recommendation 102 (2001) of 9 November 2001 on local and regional democracy in Ukraine.

## 2. Historical, political and constitutional context

8. Ukraine (formerly the Ukrainian Soviet Socialist Republic) has been an independent State since the declaration of its independence on 24 August 1991. Its current borders are as they were in 1954, when the Crimea region was transferred from the Russian Soviet Federative Socialist Republic to the Soviet Socialist Republic of Ukraine.

9. The 1981 Constitution established the country's territorial structure, which includes regions (*oblasts*), districts and local authority units (cities/towns, urban districts, villages, localities).<sup>5</sup> This general architecture of territorial authorities still applies today.

10. Concerning the allocation of financial and administrative prerogatives to cities, there were already exceptions during the soviet period, with "centres of major/heavy industry" enjoying the special status of "city of district significance" and assimilated to districts. The port city of Sevastopol, which was home to Russia's Black Sea Fleet, and Kyiv, the capital, were run directly by Moscow. The Autonomous Republic of Crimea regained its regional autonomy just before 1991.

11. Generally speaking, the present system is marked by its "soviet lineage" and bears the "sequels": a lack of transparency and clarity regarding the architecture of local and regional self-government, vertical allocation of prerogatives showing scant respect for the subsidiarity principle (very vague allocation of responsibilities between a multitude of local administrative units), a system of public finance poorly suited to the modern-day needs of a market economy and a risk of malfunctions in coordination and co-operation between the territorial units of the state administration and those of local authorities. The President of Ukraine stressed on 8 February 2012 that it was time at long last to repeal "obsolete regulations inherited from the soviet era which governed the State's relations with citizens".<sup>6</sup>

12. The main general orientations of Ukraine, fundamental rights and the organisational pattern of the State, including provisions governing the exercise of power at the level of the territorial units, are laid down in the Constitution of 28 June 1996, for which the foundations were laid in a "constitutional agreement" on the "fundamental principles of organisation of state power and of local self-government", signed between the President of Ukraine and the Speaker of the *Verhovna Rada* on 8 June 1995.

13. The 1996 Constitution was amended by a law of 8 December 2004, but the Constitutional Court repealed that law in its judgment of 1 October 2010, deeming it unconstitutional on grounds of a violation of the provisions establishing the procedure for amending the Constitution. On 6 November 2012, the Parliament passed the Law "on referendums in Ukraine", which enables the President, for a new draft Constitution, to order a national referendum to determine whether or not such a constitutional text should be adopted.

### 2.1 International situation and relations with neighbouring countries

14. Concerning relations with the European Union (EU), according to a survey run by the Razumkov centre in autumn 2011, 43.7% of the Ukrainian population is in favour of the country's accession to the EU, while 30.6% back accession to the Customs Union with Russia, Belarus and Kazakhstan, and 9.3% prefer to take a more neutral position.<sup>7</sup> There is a fairly clear division between the east and west of the country as well as between the east and south of the country on the one hand and the central and western parts on the other hand. The proportion of the population in the south favourable to accession to the Customs Union is 50.7%. The scores are considerably closer in other surveys.<sup>8</sup>

15. An association agreement between Ukraine and the EU has been initialled but not yet signed or ratified. The current positions of the two parties regarding the future development of this agreement were set out in a joint statement at the 16th EU-Ukraine Summit of 26 February 2013.<sup>9</sup> In the

<sup>5</sup> Concerning the precise demarcation of administrative borders, the Russian Federation disputes the viewpoint, within the "Ukraine-Russian Commission on territorial demarcation" that the borders between the old soviet territorial units are definitively fixed.

<sup>6</sup> <http://www.sacbee.com/2012/02/09/4251597/ukraines-path-to-eu-has-no-alternatives.html>

<sup>7</sup> [www.razumkov.org.ua/ukr/poll.php?poll\\_id=599](http://www.razumkov.org.ua/ukr/poll.php?poll_id=599)

<sup>8</sup> [http://www.ukrinform.ua/eng/news/association\\_with\\_eu\\_supported\\_by\\_41\\_of\\_ukrainians\\_\\_poll\\_301743](http://www.ukrinform.ua/eng/news/association_with_eu_supported_by_41_of_ukrainians__poll_301743)

<sup>9</sup> [http://eeas.europa.eu/delegations/ukraine/press\\_corner/all\\_news/news/2013/2013\\_02\\_25\\_1\\_en.htm](http://eeas.europa.eu/delegations/ukraine/press_corner/all_news/news/2013/2013_02_25_1_en.htm), see paras. 1, 2, 6, 9 and 10.

meantime, the EU is pursuing its neighbourhood policy, and the plans and projects to be implemented are set out in a working document of the EU High Representative dated 20 March 2013,<sup>10</sup> On the Ukrainian side, the Cabinet of Ministers adopted an action plan in April 2012 aimed at facilitating the adaptation of the country's legal system to that of the EU.<sup>11</sup> In addition to the accession issue, the *Verhovna Rada* ratified an agreement with the EU on 22 March 2013 to simplify the system of visas for certain groups of the population. Also of note is the joint declaration of the Eastern Partnership Summit in Warsaw on 29-30 September 2011. Ukraine is currently seeking EU funding for administrative reforms,<sup>12</sup> in addition to backing already provided by the EU for a number of projects within the framework of the "Eastern Partnership".<sup>13</sup>

16. Concerning co-operation between Ukraine and the Russian Federation, relations between the two sides are largely dominated by two matters: Ukraine's accession to an agreement aimed at creating a customs area with Russia, Belarus and Kazakhstan and the conditions governing the supply of energy to Ukraine by Russia on the basis of an agreement signed in January 2009 (amended by the Kharkiv contract in 2010). On 4 March 2013, the Presidents of the two countries met to discuss further action on these matters. At the Eurasian Economic Community (EAEC) summit of 29 May 2013, Ukraine was granted observer status.

17. To broaden the scope of its international action for a "multi-faceted" foreign policy, Ukraine is currently stepping up relations with China (exchanges of presidential-level official visits in 2011 and 2012). The state of Sino-Ukrainian relations is described as "strategic". The two countries are concentrating on developing investments and trade. The Ukrainian Ministry of Agriculture and the Chinese Export and Import Bank signed an agreement protocol on 28 June 2012, for example, granting Ukraine a loan of 3.65 billion USD to implement farming projects. There have been similar arrangements in other industrial and trade sectors: energy and coal, transport infrastructure projects ("Air express – Kyiv – Borispyl").

18. Ukraine is also striving to step up relations with neighbouring States such as Poland and the countries on the Black Sea coast. Where Poland is concerned, the question of the minorities living in the respective countries is important, as there are some 150 000 Polish nationals living in Ukraine and over 300 000 Ukrainians in Poland. In addition, Ukraine is building up its economic relations with Georgia and Turkey. A free-trade agreement aimed at improving trade relations with EFTA countries entered into force on 1 June 2012.

## **2.2 Internal political situation and elections**

### **2.2.1 Governmental structures**

19. The 1996 Constitution created a somewhat "presidential" split of powers between state authorities. The powers of the President are listed in article 106 of the Constitution. The President of Ukraine is Mr Victor YANUKOVYCH.

20. Other particularly important articles are 113 (establishing the accountability of the Cabinet of Ministers to the President) and 106 paragraph 16 (repealing of decisions of the Cabinet of Ministers of Ukraine and of the Council of Ministers of the Autonomous Republic of Crimea by the President using discretionary power). The reform set out in the 2004 Constitution, declared unconstitutional, attempted to strike a balance of power between the President and the Parliament. The Constitutional Court judgment of 1 October 2010 prompted a return to the original version of the 1996 Constitution, including its allocation of powers between those two organs.

21. As for the government, Prime Minister Mykola AZAROV was elected for the first time on 11 March 2010 and re-elected on 13 December 2012 by the *Verhovna Rada*, with 252 votes for and 129 against (with 20 abstentions). The current government is made up of 24 ministers (including one first deputy prime minister and three other deputy prime ministers) and one minister responsible for coordinating the Cabinet of Ministers.

<sup>10</sup> [http://ec.europa.eu/world/enp/docs/2012\\_enp\\_pack/progress\\_report\\_ukraine\\_en.pdf](http://ec.europa.eu/world/enp/docs/2012_enp_pack/progress_report_ukraine_en.pdf)

<sup>11</sup> <http://www.thestreet.com/story/11488190/1/ukraine-adopts-eu-integration-plan.html>

<sup>12</sup> <http://radioukr.com.ua/en/148/530435/>

<sup>13</sup> See: [http://europa.eu/rapid/press-release\\_IP-12-1437\\_en.htm](http://europa.eu/rapid/press-release_IP-12-1437_en.htm) and also: EUROPEAN COMMISSION, COMMISSION IMPLEMENTING DECISION of 5.12.2012 on the Annual Action Programme 2012 part 2 in favour of Ukraine to be financed from the general budget of the European Union, Brussels, 5.12.2012 C(2012) 8842 final.



22. As regards the government's local and regional self-government strategy during the 2008-2012 parliamentary term, a coalition agreement between the Party of Regions, the Communist Party, the Lytvyn bloc and independents (235 deputies in total) set out the following objectives: "Strengthening of local self-government as a foundation stone of democracy, through the extension of local councils' powers, the elimination of as much bureaucracy as possible in local development matters, decentralisation of power and the reform of inter-budgetary relations in favour of local self-government." (see Section IV, No. 4.6).

### 2.2.2 Elections

23. At the last presidential elections, Mr YANUKOVYCH was elected President (for a term of 5 years) in the second round of voting, on 7 February 2010, with 48.95 % of the vote, compared to 45.47% for Mrs Yulia TIMOSHENKO. He took office as President of Ukraine on 25 February 2010.

24. At the parliamentary elections of 28 October 2012, the Party of Regions won 210 seats (including the independents who declared their intention to cooperate with that party); the Communist Party 32; the *Batkivshchyna* (Fatherland) bloc 101;<sup>14</sup> UDAR 40; Svoboda 37; the other parties 7; and individual candidates 18 seats. In total, the *Verhovna Rada* comprises 445 deputies (five seats representing constituencies no. 94, 132, 194, 197 and 223 were not allocated by the Central Electoral Commission). The Constitutional Court declared a request from 54 parliamentarians to intervene in this matter to be inadmissible. On 23 April 2013, the Ministry of Justice presented a proposal for the organisation of new elections in the five vacant constituencies. On 16 May 2013, the three chairs of the opposition groups in Parliament announced their intention to put forward a joint candidate in those five constituencies.

25. The funding of political parties in Ukraine depends largely on donations from private individuals or corporate entities and not on state subsidies. According to a calculation by the American *Forbes* magazine dated 22 May 2013, the Party of Regions had funds of 325 million UAH in 2012, the Fatherland Party 115 million UAH, the Communist Party 112 million UAH, UDAR 43.5 million UAH and the Svoboda Party 27 million UAH.

26. Regarding the duration of the term of Parliament, after consultation with the Constitutional Court the *Verhovna Rada* passed an amendment to the Constitution on 1 February 2011 by a two-thirds majority (310 votes out of 450), extending the term of Parliament from four to five years. That amendment also applies to local elections. The specific amendments concern articles 76, 77, 136 and 141 of the Constitution.

27. The presidential election will be held on 29 March 2015. For local councils, the election date set is 25 October 2015.

28. The basic provisions governing elections at the level of territorial authorities are set out in the 1996 Constitution (articles 69, 136 (Crimea) and 141) and also in the law on the election of deputies of the Assembly of the Autonomous Republic of Crimea and town/city, village and settlement councils.<sup>15</sup> That law guarantees the right of citizens aged 18 years and over to participate in local elections (article 70).

29. The *Verhovna Rada* amended the law of 2006 (system of election following the principle of proportional representation) in June 2010<sup>16</sup> and introduced a mixed system: 50% of the seats are allocated between the candidates grouped on a list of political parties, and 50% are allocated to independent candidates on a majority vote basis. Since no 5% threshold is imposed, a great many parties and candidates can stand in local elections, at least in theory. In reality, however, political representation in the councils is concentrated in the hands of ten or so parties. The system is intended to guarantee a stable majority within local councils. According to representatives of the associations, there is little political confrontation in local councils.

<sup>14</sup> On 4 April 2013, 4 members left the group: [http://www.ukrinform.ua/eng/news/four\\_mps\\_quit\\_batkivshchyna\\_faction\\_301238](http://www.ukrinform.ua/eng/news/four_mps_quit_batkivshchyna_faction_301238)

<sup>15</sup> *Verhovna Rada* of Ukraine; law of 10.07.2010 no. 2487-VI,

<sup>16</sup> *Ibid.*

30. Party political representation at local level is the result of the local elections of October 2010, except where the election of the mayors of Kyiv, Ternopil and Sevastopol is concerned.<sup>17</sup> President Yanukovich's party – the Party of Regions – managed to consolidate its position in several regions, winning 36% of the vote, particularly in the east of Ukraine. The Batkivshchina bloc won 13%, the Front Zmin 7%, the Communist Party 6%, Svoboda 5%, Silna Ukraina 4%, Nasha Ukraina 2%, and Yedynyi Tsent and UDAR each took 1.5%. According to the comments of the international observers,<sup>18</sup> the elections did not fully comply with international standards. They criticised mainly the changing of the electoral law, on 10 June 2010, prior to the October election. Turnout throughout Ukraine was around 50% (lowest percentage since independence in 1991).<sup>19</sup>

31. Among the other sensitive issues are:

- the exclusion from local elections of all parties not registered at national level for at least one year (this requirement was repealed just before the elections);
- the ban on standing for election as a bloc (grouping of parties);
- the changing of the electoral system, from a proportionate representation system to a mixed system based on proportionate representation and majority system, with the parties having to adapt their electoral campaigns in a short space of time;
- administrative problems such as the non-registration of opposition candidates by electoral commissions;

32. The Congress has observed several local elections and published reports and/or declarations in collaboration with the OSCE/ODIHR on the local elections organised in Ukraine since the monitoring visit in 2001.<sup>20</sup>

33. With regard to the election of the mayor of the city of Kyiv, see section 6.3.

### 2.2.3 Referendums

34. Since the Parliamentary elections of 28 October 2012, the work of the *Verhovna Rada* has been characterised by animated confrontation between the political parties supporting the President and the opposition parties. Consequently, the majority recently introduced into political debate the idea of making greater use of referendums "on topical issues concerning the future of the Ukrainian State".<sup>21</sup> Five issues will be put forward.<sup>22</sup> The legal bases for such a procedure were reinforced by the Law of 6 November 2012 "On referendums in Ukraine", which empowers the President (including in the event of a new draft amendment to the Constitution) to order the holding of a national referendum for the adoption of a constitutional text. Article 72 of the Constitution has been amended along these lines.<sup>23</sup>

## 2.3 Previous reports and recommendations

35. Although previous presidents and governments have stated that they were in favour, since Congress Recommendation 102 (2001), of territorial governance reform projects, no large-scale, in-depth and coherent reform has been carried out to date (whether for local and regional governance, regional state administration, inter-budgetary relations or local or state-run services). One final attempt

<sup>17</sup> See Section XIV. "Final and transitional provisions" of the aforementioned law.

<sup>18</sup> See Congress Recommendation 303 (2011)1 of 22-24 March 2011 on local elections in Ukraine. See also the report of the European Parliament of 17 November 2010 on the mission to Ukraine on the occasion of the local and regional elections of 31 October 2010.

[http://eeas.europa.eu/delegations/ukraine/documents/press\\_releases/report\\_ep\\_en.pdf](http://eeas.europa.eu/delegations/ukraine/documents/press_releases/report_ep_en.pdf)

<sup>19</sup> <http://www.kas.de/ukraine/en/publications/21063/>

<sup>20</sup> CG/Bur (8) 164 Report on local and regional elections in Ukraine held on 31 March 2002, Rapporteur: Christopher NEWBURY (United Kingdom, L), Document adopted by the Bureau of the Congress on 7 May 2002. – 20th Session of the Congress of Local and Regional Authorities of the Council of Europe – Observation of local elections in Ukraine, 20th session, Strasbourg, 22-24 March 2011, Local elections in Ukraine (31 October 2010) Resolution 322 (2011)1.

<sup>21</sup> [http://www.ukrinform.ua/eng/news/president\\_may\\_submit\\_to\\_referendum\\_topical\\_issues\\_of\\_country\\_development\\_yefremov\\_302794](http://www.ukrinform.ua/eng/news/president_may_submit_to_referendum_topical_issues_of_country_development_yefremov_302794) "Укїнформ", Yefremov quoted in Ukrinform of 3 May 2013.

<sup>22</sup> [http://www.ukrinform.ua/eng/news/party\\_of\\_regions\\_wants\\_to\\_put\\_five\\_issues\\_to\\_referendum\\_301589](http://www.ukrinform.ua/eng/news/party_of_regions_wants_to_put_five_issues_to_referendum_301589)

<sup>23</sup> Article 72. A Ukraine-wide referendum shall be called by the *Verkhovna Rada* of Ukraine or by the President of Ukraine, in accordance with their authority established by this Constitution.

A Ukraine-wide referendum shall be called at the initiative of the people at the request of no fewer than three million citizens of Ukraine holding the right to vote, on condition that the signatures in favour of calling the referendum have been collected in no less than two-thirds of the *oblasts*, with no fewer than 100 000 signatures in each *oblast*.

at major reform failed in 2009. Consequently, several Congress recommendations of 2001 are still relevant and will be reiterated in the present report.

### **3. Honouring of obligations and commitments**

#### **3.1 Level at which the Charter is incorporated**

36. Ukraine is a country with a unitary tradition. Article 9 of the Constitution calls for the incorporation of international treaties such as the Charter into the domestic law of Ukraine. Accordingly, there is an obligation for all the country's organs to apply the Charter.

37. President Yanukovich recently expressly referred, in his address to the Council of Regions on 21 March 2013, to the European Charter of Local Self-Government.<sup>24</sup> This political emphasis reflects the fact that Ukraine has signed and ratified the Charter, in force since 1 January 1998, without reservations or declarations.

38. According to the President of the Constitutional Court, the Charter has been used as a reference text in a series of Court judgments (18 judgments in total) relating to problems of local governance. To cite just a few examples: the judgments of 13 May 1997 on the status of municipal councillors, of 13 July 2001 on the administrative and territorial organisation of Ukraine, of 16 January 2003 on questions concerning Crimea, of 25 December 2003 on the organisation and functioning of the city of Kyiv, of 16 April 2006 on the repeal of acts of local authorities. The Court directly referred to the Charter in all those cases.

#### **3.2 Constitutional and legislative developments**

##### *3.2.1 Constitution*

39. After the failure to adopt a new constitution in 2004 (law no. 2222 of 8 December 2004),<sup>25</sup> repealed by the Constitutional Court judgment of 1 October 2010, the 1996 Constitution once again became the constitutional text applicable in Ukraine.<sup>26</sup> It was amended in 2011 (law of 1 February 2011) to extend the parliamentary term of office from four to five years. That amendment also applies to elections at local level.

40. Concerning the overall situation of local self-government, article 7 of the Ukrainian Constitution states that: "In Ukraine, local self-government is recognised and guaranteed". Other constitutional provisions expressly mention local authorities or have ramifications for the management of local affairs.<sup>27</sup>

41. The provisions relating to the Autonomous Republic of Crimea are in articles 134 to 139 of the Constitution; arrangements for local governance are detailed in articles 140 to 146; article 13 covers "property rights in respect of natural resources".

42. The responsibilities of the Ukrainian Parliament, which are of particular importance, are defined in article 85 paragraph 28 (termination of the term of office of the Crimean Parliament by Parliament), paragraph 29 (definition of the boundaries of territorial units) and paragraph 30 (setting of dates for local elections). Article 86 establishes the right of a member of Parliament to carry out an inquiry as

<sup>24</sup> <http://www.president.gov.ua/en/news/27190.html>

<sup>25</sup> See the texts of 8 December 2004 on the amendments to the Ukrainian Constitution published by the Venice Commission on 25 April 2005, (CDL(2005)036 Opinion 339 / 2004 English only)

<sup>26</sup> See opinion no. 599/2010 (CDL\_AD(2010)044) of the Venice Commission on the constitutional situation in Ukraine of 20 December 2010

<sup>27</sup> Articles 19 making acts subject to the law, 20 on "Kyiv as capital of Ukraine", 36 on the "right to freedom of association in political parties", 38 on "citizens' right to participate in national and local referendums", 40 on the "right of petition", 42 on "restrictions on elected representatives' professional activities", 47 on the "right of the poor to free or affordable housing", 48 on the "guarantee to an adequate standard of living", 49 on "adequate public health systems", 53 on "access to education establishments", 56 on the "right to compensation for damage caused by illegal administrative acts", 71 on the "principles governing elections", 78 on the "limitation of terms in elected office", 118 on the "principle of state administration in the *oblasts* and districts, and in Kyiv and Sevastopol, with appointment of heads of administration by the President of Ukraine on the proposal of the Cabinet of Ministers", 119 on the "functions of local state administrations", 132 on the "principles governing the territorial structures of Ukraine" and 133 listing "territorial units".

well as their right to be informed of inquiries carried out by the departmental heads of state or local authorities.

43. Article 92 stipulates that the following shall be governed by law:

- paragraph 13: territorial structures of Ukraine,
- paragraph 15: principles of local self-government,
- paragraph 16: the status of the capital of Ukraine and the status of other cities,
- paragraph 8: the special status granted to economic zones.

44. Article 95 provides for the just and impartial distribution of social wealth among citizens and territorial communities.

45. The powers of the President of Ukraine include the power to repeal acts of the Council of Ministers of Crimea (article 106, paragraph 16) and also a veto over the laws passed by Parliament, including those relating to local governance (paragraph 30).

### 3.2.2 *Legislation*

46. Besides the Constitution, the legal framework governing the different aspects of local governance is virtually infinite.<sup>28</sup> The following laws are particularly important:

- the Law of 21 May 1997 on local self-government in Ukraine (no. 280/97), which entered into force on 12 June 1997.
- the Law of 9 April 1999 on local public/state administration (no. 586-XIV). This law determines the activities of executive state authorities at regional and local level as well as the relations between the state administration and local authorities. It also stipulates that the State may carry out the tasks assigned to local authorities were these are delegated to the state administration.
- the Law of 21 June 2001 on the Budget Code of Ukraine, amended in 2011. This law lays down the basic rules governing the drawing up of the state budget, including the methods to be used to designate grants for local budgets and also the provisions governing inter-budgetary transfer methods and procedures and the conditions governing local-level debt.
- the Law of 15 January 1999 on the city of Kyiv (no. 401-XIV), amended in 2006.
- the European Charter of local self-government, incorporated in Ukrainian domestic law by the law of 15 July 1997, giving it the status of a Ukrainian law.
- the Law on taxes (no. 2755-VI of 2.12.2010) relating to "local taxes and levies", which defines the different taxes and levies, the maximum rates and the methods for calculating local taxes (see also the previous circular of the Cabinet of Ministers of 17 June 1993, no. 3293-XII).

47. There are a whole host of other national laws relating to the powers of local authorities which impact on finances and functioning of local authorities and require specific analysis as regards compliance with obligations arising under the Charter. One example is Law no. 5081-VI on emergency medical care of 5 July 2012, which entered into force on 1 January 2013 and contains provisions governing the allocation of powers between the different territorial units and state administrations as well as various financial provisions.

48. Several of the delegation's talking partners stressed that the State is currently accumulating major powers for stimulating economic activity at national level, while reducing the volume of local authorities' tax revenues from local business activities. The Association of Ukrainian Cities mentioned the example of property registration, a service which will be transferred to the Ministry of Justice as of 1 July, with the result that stamp duty will be collected by state services.

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<sup>28</sup> See the compilation of principal legislative texts in the CDLR report of 2010, page 13: CDLR, Structure and Operation of Local and Regional Democracy, Ukraine, Report for 2010.

49. Ukrainian authorities argue that the reform is made necessary by the need to adapt Ukrainian laws to European legislation. As this type of transposition is likely to become a frequent occurrence in the event of Ukraine signing an agreement on accession to the EU, and bearing in mind the ramifications of such transpositions for local authorities, the rapporteurs recommend reinforcing the structures for coordination between the associations and central government on European policy.

50. In addition, the associations referred to the Law of 16 October 2012 "On optimising executive powers in the area of ecology and natural resources", which abolished regional Ecology Ministry authorities and transferred major powers in this sector to local authorities. The rapporteurs believe that the application of this law (and above all the transfer of the funding and staff required by this new supervisory structure) could serve as a model for devolution and reflects the political willing of the central authorities to redress the balance of power between the different levels of government.

### 3.2.3 Access to the Constitutional Court for local and regional authority bodies

51. Under article 150 of the Constitution, the bodies entitled to refer a matter to the Constitutional Court are:

- the *Verhovna Rada* of the Autonomous Republic of Crimea, which may request the Court to verify the constitutionality of acts in the cases listed in article 150 paragraph 1 of the Constitution;
- the Autonomous Republic of Crimea and local councils, which may request an official interpretation of the Constitution<sup>29</sup>.

52. Local and regional authorities cannot request the Court to verify the constitutionality of a law but they may lodge an application with an ordinary law court (article 145 of the Constitution) in order to defend their interests. The details are set out in the 1997 Law on local self-government (article 38 paragraph 1 sub-paragraph 4<sup>30</sup>, article 42 paragraph 4, sub-paragraph 15 and article 43 paragraph 1 sub-paragraph 30).

53. The Court has received 146 requests of this kind, and 18 have been declared admissible. Among other things, the complaints related to the compatibility of elected office, the powers of local authority bodies, the exercise of executive power in Kyiv and the quality of legislative acts of the Autonomous Republic of Crimea.

54. Ukrainian legislation complies with article 11 of the Charter, which requires a right of recourse to a judicial remedy. Nevertheless, the rapporteurs encourage the authorities to incorporate a provision entitling territorial authorities to apply to the Constitutional Court in cases where an act is addressed to the legal person concerned or is of direct and individual concern to them, in order to afford local authorities greater legal protection.

## 3.3 Local authorities: territorial structures and powers

### 3.3.1 Territorial structures

55. Article 132 of the Constitution provides an outline for territorial structures<sup>31</sup> and establishes the principle of the unity and indivisibility of the country.

56. Article 133 provides a detailed list of the different types of regional authorities: the Autonomous Republic of Crimea, the 24 *oblasts* and – for the cities of Kyiv and Sevastopol – the status of an *oblast* to which special regulations apply. Article 133 paragraph 1 lists the different types of territorial unit (seven separate types in total).

<sup>29</sup> See article 41 and article 13 paragraph 4 of the Law "On the Constitutional Court of Ukraine".

<sup>30</sup> 4) ... to appeal to a court with a view to having acts of executive bodies or other local self-government bodies, enterprises, institutions and organisations, which violate the rights of local authorities or the powers of local self-government bodies and officials declared unlawful.

<sup>31</sup> Article 132: The territorial structure of Ukraine is based on the principles of unity and indivisibility of the state territory, the combination of centralisation and decentralisation in the exercise of state power, and the balanced socio-economic development of regions that takes into account their historical, economic, ecological, geographical and demographic characteristics, and ethnic and cultural traditions.

57. The provisions on the Autonomous Republic of Crimea are set out in articles 134 to 139 of the Constitution, in the Law of 23 December 1998 on the adoption of the Constitution of the Autonomous Republic of Crimea (n° 350-XIV)<sup>32</sup> and in the Law on self-government in Crimea<sup>33</sup>. The latter law gives the Constitution of the Autonomous Republic of Crimea the status of a national law. As a result, the Parliament of the Autonomous Republic of Crimea has greater powers than the other entities at the same level, such as *oblasts*. Moreover, article 10 of the Constitution of the Autonomous Republic of Crimea states that Russian, Crimean Tatar and various other minority languages must be protected. Article 10 paragraph 2 stipulates that the Russian language must be used in all areas of public life.

58. Where the other territorial authorities are concerned, the principles laid down in articles 140 to 146 of the Constitution are transposed with a view to their application in the Law on local self-government of 21 May 1997 (no. 280/97), which entered into force on 12 June 1997. That law sets out the governing principles, functions and legal status of local authorities, as well as the status of their organs and officials. It regulates the basis of the financial and material powers attached to local self-government. Chapter III of the law defines the content and procedures applicable to the drawing up and implementation of local budgets. It specifies the entitlement of local authorities to state grants and stipulates that the independence of local self-government must be guaranteed through authorities having their own resources. It also defines the forms of citizen participation in the decision-making process at local level.

59. In the rapporteurs' opinion, Ukraine's present territorial structure still reflects the "centrally planned economy" logic. While all the capitals of *oblasts* have the status of "city of *oblast* significance", there are other "cities of *oblast* significance" (designated during the soviet era as "centres of major/heavy industry"), which are sometimes smaller than the capitals of *oblasts*. This system has resulted in a multitude of cities of this kind and a lack of hierarchical structuring. Furthermore, these cities have a preferential entitlement to direct transfers of funds from the national budget, whereas others depend on transfers from the competent state authorities. The introduction of a hierarchical system of authorities conforming to rational criteria therefore seems necessary to avoid this diversity of exceptions.

60. The table shown in appendix IV to this report indicates the number of territorial units per region (*oblast*), at 1 January 2012.

61. The multitude of territorial units implies a smaller population and surface area per unit. In parallel, the economic basis of the local authorities (the basis of their autonomy) is reduced in the same proportion. According to a study of socio-economic expenditure of villages and settlements by the Ministry of the Economy (2007), 9 000 units (7 500 of them with fewer than 3 000 inhabitants) have had virtually no funding to invest in infrastructures within their spheres of competence as defined by the law. The associations estimate the annual fiscal potential of local authorities in Ukraine at 20 € per head of population (compared with 400 € in Poland and 2 000 € in Germany).

62. This trend has resulted in a weakening of the scope of local self-government as well as a tendency towards recentralisation of activities and services (normally handled at local level) as they are transferred back to state entities. The rapporteurs can therefore only endorse the comments of the Ukrainian policy-makers who repeatedly stressed the need for territorial reform to the delegation.

63. A look at the respective populations of the *oblasts* reveals that they currently range from 900 000 inhabitants (Chernivtsi) to 4.8 million inhabitants (Donetsk), with an average of 1.9 million inhabitants. This is a sizeable range and a reform of territorial structures entailing the drawing of new territorial boundaries should provide for an optimum size for entities once the reform is complete, to achieve solid economies of scale.

### 3.3.2 Local authority powers

64. As regards the division of powers, the system is extremely complex. The associations are calling for "residual power endowed to the local level", meaning that the local authorities may exercise the powers that are not specifically allocated to other levels of government. However, the system of allocation of powers provided for in law appears to run counter to this: the State allocates specialised powers to different types of local authorities. Article 140 of the Constitution remains vague, stating that

<sup>32</sup> See The Bulletin of the Supreme Rada of Ukraine (VVR), 1999, no. 5-6, Art. 43.

<sup>33</sup> On the Autonomous Republic of Crimea, *Verkhovna Rada* of Ukraine; Law from 17.03.1995 № 95/95-BP.

"local self-government is the right of a territorial community - ie residents of a village or a voluntary association of residents of several villages forming one village community, residents of a settlement or of a city - to independently resolve issues of a local nature within the limits of the Constitution and the laws of Ukraine".

65. Consequently, the only useful criterion for demarcating the scope of local powers is contained in the words: issues of a local nature. Given that the Constitution leaves it to the legislator to define the notion of "issues of a local nature", the law attempts to cover this vast area by the copious listing of powers, instead of limiting this list of powers to a minimum and proceeding on the principle of general competence at local level, which would have the advantage of complying as far as possible with the subsidiarity principle.

66. Since article 118 of the Constitution assigns executive power to local state administrations in the *oblasts* and *rayons* [districts] (as well as in the cities of Kyiv and Sevastopol), the allocation of powers provided for in law depends on the type of territorial authority, which may be a state or local authority. It should also be noted that the legal provisions governing the allocation of powers make a distinction between authorities' own powers and delegated powers.

67. The principal state authority powers at the level of the *oblasts* and *rayons* are:

- protection of citizens' rights, freedoms and lawful interests;
- education, health protection, sport;
- development of the business environment (public buildings and works, business investments, support for the activities of private business concerns);
- preparation and management of the budget;
- real estate transactions;
- environmental protection;
- matters relating to social security;
- matters relating to national defence.

68. Articles 43 and 44 of the Law on local self-government list the powers of *oblast*-level councils. These councils are obliged to delegate a substantial proportion of their "political" functions to the state authorities of the *oblast*, which means that the role of councils is limited to giving opinions on sectoral planning proposals and approving management reports. On the other hand, as an elected body, the council must report on its activities to the population of the *oblast* or *rayon*. This right of information and political accountability is still fairly weak however, as it hinges essentially on the results of public affairs management by the state administration.

69. Officially, the *oblast* or *rayon* council approves the budget but, since the powers are executed by the state authorities, its approval is a pure formality. The costs of state administration (including the wages of officials) are covered by the state budget. The operational budget of the *oblasts* and *rayons* comes from appropriations in the national budget of the competent ministry fixed for each region.

70. The principal local powers at the level of towns/cities, villages and settlements are as follows (as per articles 25 to 40 of the Law on local self-government):

- provision and funding of social services;
- pre-school and school education;
- public health;
- sports and culture;
- public services such as waste collection, drinking water supply, waste-water treatment, public transport;
- building permits;
- land management;
- management of local public enterprises;
- planning and implementation of the local budget.

71. The allocation of powers between state and local authorities does not follow a general principle such as the subsidiarity principle. The two laws on state administration and local administration regulate the distribution of powers for each form of public activity. The interference between the different levels, clashes of competence and uncertainties over which body is empowered to manage a

given prerogative give rise to major confusion and profound contradictions. According to a study by the "Center for Policy Studies" in Kyiv,<sup>34</sup> there is an 80% overlap of powers between the two tiers of administration (state and local).

72. At the same time, there are a substantial number of exceptions to the general system of allocating powers. One current example is the question of emergency medical assistance, governed by Law no. 5081-VI of 5 July 2012, which assigns the following tasks to authorities at the level of the *oblasts*:

- drawing up and approving an agreement with the competent central authority;
- determining, in consultation with the competent central authority (which handles the framing and implementation of state policy in the area of health care), the list of health care establishments constituting the system of emergency medical care, and the local administrative units and also managing those institutions;
- granting funding for the organisation and functioning of the emergency medical care system on the territory of the local administrative unit concerned, to ensure provision of the necessary equipment and technical resources.

73. Firstly, there is a degree of contradiction with article 32 paragraph 9 b1) of the Law on local self-government, which grants towns/cities the power to provide necessary health care services which are free and accessible. On the other hand, article 44 paragraph 13 of the same law stipulates that responsibility "for the development of all forms of health care" must be delegated to the state administration. If "emergency medical assistance" forms part of "health care" in general, it is the state administration that must be assigned this power. Accordingly, local councils, in principle, have no political responsibility or any co-funding obligation in this sphere. Law no. 5081-VI is therefore a compromise between the necessity of organising "emergency medical assistance" at an effective administrative level and observance of the fact that health policy, including emergency care, would normally fall within the remit of local self-government.

74. Where funding is concerned, article 14 of Law no. 5081-VI regulates the financial and logistical system for emergency medical assistance in accordance with the law on finance, and consequently on an annual basis. The influence of regional authorities is therefore fairly weak and funding is unstable as it depends on the annual law on the budget.

#### **4. Article-by-article analysis of the situation of local democracy in the light of the European Charter of Local Self-Government**

*This analysis is based on the previous recommendation.*

##### **4.1 Article 2 - Constitutional and legal foundation for local self-government and Article 3 - Concept of local self-government**

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

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

75. The principle of local self-government is set out in article 7 of the Constitution: "In Ukraine, local self-government is recognised and guaranteed". This guarantee fosters local self-government. Article 92 paragraph 15 of the Constitution lays down the principle that the "principles of local self-government" shall be determined exclusively by law.

76. As far as regional self-government is concerned, article 134 of the Constitution stipulates that the Autonomous Republic of Crimea is an "inseparable part" of Ukraine. This article grants the Autonomous Republic a right to exercise the powers listed in its article 137, but within the limits defined by the Constitution. As for regional self-government in general, the Constitution only indirectly recognises it, by listing the territorial units holding the status of an *oblast*, which include the cities of Kyiv and Sevastopol.

<sup>34</sup> <http://www.icps.com.ua/eng>



77. The details of local governance are set out in the Law on local self-government of 21 May 1997, and also in other special laws (see paragraph 42 above). Ukrainian legislation (both constitutional and ordinary) therefore complies with article 2 of the Charter.

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

- 1 Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
- 2 This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

78. According to article 140 of the Constitution and article 2 of the Law on local self-government of 1997, local self-government is "the genuine capability and right, guaranteed by the State, of a territorial community – ie residents of a village or a voluntary association of residents of several villages, residents of a settlement or of a town/city - to independently resolve issues of a local nature within the limits of the Constitution and the laws of Ukraine".

79. So self-government must be exercised by territorial authorities, and therefore by citizens, directly or through the intermediary of councils of towns/cities, settlements and villages and their executive bodies, as well as through the councils of *rayons* or *oblasts*, representing the common interests of territorial communities of villages, settlements or towns/cities. This results in a fairly complex legal and administrative context, as regards both the content and scope of self-government and the bodies executing the decisions, with the latter being differentiated by the position of the authority concerned within the country's vertical administrative structure.

80. Regarding content, Ukrainian legislation is, at first sight, more restrictive than article 3 paragraph 1 of the Charter, as it limits autonomous decision-making and management to "matters of local importance", whereas the Charter refers to "a substantial share of public affairs". Furthermore, the basic principles defined in article 4 of the Law on local self-government include the "principle of combining local and national interests" in the exercise of self-government. Here we can see a certain entanglement between the levels of competence and the steering of local action towards the national interest.

81. It should further be noted that article 24 of the Law on local self-government stipulates that "the legal status of local self-government in Ukraine shall be determined by the Constitution, the present law and other laws, whose provisions must not run contrary to those of the present law". The associations are calling for closer compliance of Ukrainian legislation with the Charter in order to implement the principle of consistent local authority involvement where local affairs are concerned. The rapporteurs note that the legislation partly complies with the Charter on this point and invite the Government to reinforce subsidiarity, for example by granting a power of general competence to local authorities.

82. The Ukrainian authorities are committed<sup>35</sup> to promoting the development of civil society in Ukraine in order to adapt Ukrainian legislation to European standards. The Decree 342/2013 contains a series of obligations and recommendations to local authorities. The rapporteurs consider that reinforcing civil society activity creates a favourable environment for the rights of citizens within the meaning of Article 3 of the Charter and can improve the democratic process within local communities.

#### **4.2 Article 4 – Scope of local self-government**

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

- 1 The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
- 2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.

<sup>35</sup> (as evidenced by Decree. 342/2013, dated 25 June 2013, on the "Plan of measures for the implementation of the State Strategy to promote the development of civil society in Ukraine in 2013).

3	Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4	Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5	Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6	Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

83. Under Ukrainian legislation, the fundamental powers and responsibilities of the local tier of government are set out in Part II of the 1997 Law on local self-government in Ukraine (Organisation and legal basis). The system for allocating powers is fairly complex. It makes a distinction between the different organs of an authority (council, executive body, mayor) and between its own and delegated powers. Article 26 lists 50 different “powers of councils”. Article 27 thereof (chapter 2) gives cities’ executive bodies eight powers relating to economic and cultural development and to planning and accounts. Article 42 lists at least 20 different powers of mayors.

84. Although the law assigns an impressive list of powers to local authorities, the rapporteurs were told that a number of national laws assign to State entities (central government departments at local and regional levels or new national agencies) powers which were hitherto wholly or partly the responsibility of local authorities. Some powers have thus been transferred relating to real estate issues, planning and construction, economic development and highways, as well as welfare, health and education. Where buildings in rural areas are concerned (planning permission), central government seems to have a negative influence on local self-government, through technical requirements which do not always allow for the local situation. Central government imposes on local entities in rural areas (for the benefit of private-sector investments) an “accelerated” administrative procedure which allows for neither these entities’ administrative or financial capacity (very often weak and not very effective) nor the demands of urban planning adapted to rural needs. Thus small communities are politically responsible for the “slowing down” of local economic development, without having effective instruments to remedy this. In other sectors concerning, for instance, underground resources and the division of powers relating to water resources, the associations have called for a greater concentration of powers at local/regional level.

85. These reforms are increasingly restricting the scope of local self-government, curbing local authorities’ territorial responsibility (restriction of local powers over residential areas), budgetary capacity (fines imposed for parking offences on the local authority’s roads go to central government), revenue (concentration of customs revenue at a new national agency) and powers (registration of enterprises, which is currently a matter for local services, is to be transferred to the Ministry of Justice with effect from 1 July 2013). Similarly, there is a decline in local authority offices’ capacity to conduct a comprehensive policy including monitoring the application of spatial planning, urban planning and building policies. On this last point, the responsible committee of the *Verhovna Rada* seems to want to respect the current division of powers. These different developments might well result in a failure to comply with the provisions of Article 4 (3) of the Charter, which states that public responsibilities shall preferably be exercised by those authorities closest to the citizen. The associations are calling for greater co-operation between central government and local entities in the spheres of education and public health, so as better to meet public needs. The rapporteurs feel sure that a better division of powers to the benefit of local authorities may contribute to greater conformity with the provisions of Article 4 (3) of the Charter.

86. Following their discussions with various parties during the visit, the rapporteurs note a discrepancy between the legal situation of local self-government in Ukraine and the reality. A number of factors restrict the substance and scope of self-government:

- a tendency by national institutions to centralise powers;
- the absence of a stable economic basis at local level;
- the weakness of local and regional authorities’ financial architecture (see section 4.7: Financial resources of local authorities);
- the absence of a clear division of powers and administrative activities between central government departments and local and regional authorities, which may give rise to overlapping or duplication in the exercise of powers.

87. The rapporteurs consider that, in addition to the aforementioned aspects, there are several other factors restricting the full and complete exercise of local self-government by local authorities. 22 years after achieving independence, Ukraine has still not managed to carry out a thorough and consistent reform of local and regional self-government.

88. For want of sufficient powers and economic and financial resources, most local authorities no longer have the “ability” to which Article 3 of the Charter refers. Furthermore, the stepping up of activity by the responsible ministries has, as the years have gone by, encouraged specialisation and an increase in the administrative role of central government departments at local and regional levels. This has brought about a high level of interference by central government in local authorities’ sphere of action.

89. In addition, there is an inherent tendency for this effect to increase: as central government’s administrative role and staff numbers increase, so does the number of obstacles impeding reform of local and regional government structures (a reform which could culminate in a transfer of powers to local entities, accompanied by transfers of the corresponding staff and funding). These tendencies are contrary to Articles 20 and 71 (2) of the Law on local self-government in Ukraine, according to which “control by the State should not interfere with the exercise of the exclusive powers of local authorities”. The idea underlying this restriction, although it relates to the question of specific supervision, may be applied more generally in order to curb central government’s attempts to influence the division and exercise of powers to the detriment of local authorities and of their right to self-government.

90. Where the funding of delegated powers is concerned, the associations have condemned several violations of the principle of concomitant financing, asserting that central government does not cover the full costs of delegated powers. The Association of Ukrainian Cities cited the example of the electrified urban public transport system. It said that there is no requirement in the contract for central government to transfer to local budgets in due time the funds needed to meet the expenditure associated with the provision of transport services at a reduced rate and adequate compensation to cover the difference between the fares (approved by the Ministry of Infrastructure and Ministry of Economic Affairs) and the actual cost of transport services. So if compensation is not paid by the national budget, financial support for electrified urban transport companies will have to be paid solely by municipal councils.<sup>36</sup>

91. As a result, local self-government is undermined and its scope for action restricted. The trust of the local population is, according to Article 2 (1) of the Law on local self-government in Ukraine, fundamental to any local or regional authority, and therefore to the right to self-government. The population’s trust in the ability of local and regional institutions effectively to manage a significant portion of public affairs has been weakened in Ukraine. The rapporteurs therefore feel certain that local self-government in Ukraine needs, both in the legislative sphere and in terms of political practice, a comprehensive reform in order to achieve a sufficient level of compliance with the provisions of the Charter.

92. The rapporteurs did not hear any general criticism of the adaptation of the exercise of delegated powers to local conditions, within the meaning of Article 4 (5) of the Charter. Communities with a population of under 5,000, because of their low level of budgetary capacity, apparently find it difficult to fund delegated powers.

93. With reference to the consultation for which Article 4 (6) of the Charter provides, Article 146 of the Constitution states that “Other issues of the organisation of local self-government, the formation, operation and responsibility of the bodies of local self-government, are determined by law”. Ukraine therefore adopted, on 16 April 2009, Law No. 1275-VI on the associations of local self-government entities, which came into force on 2 June 2009. According to the law, interaction mainly takes the form of “participation in consultations” (Section IV: Principles of the interaction of the associations with public authorities, Article 17, paragraph 2.a and b). The national associations are entitled to be consulted by the President, Supreme Court, Parliament and Cabinet.

94. The representatives of the national associations note that, in formal terms, consultation functions properly. They also noted an improvement in the procedures for consultation with the new Asarov government. In Resolution No. 1065 of 21 November 2012, the Cabinet amended the government’s

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<sup>36</sup> AUC, press release of 10 December 2012.

rules of procedure. The associations' representatives are now admitted to Cabinet meetings on an advisory basis, "if the Cabinet is dealing with subjects affecting local authorities' powers and interests and regional development issues". The responsible ministries have to involve the associations in the preparation of draft legislation (relevant to their interests). The ministries are required to indicate the extent to which the association's opinion was taken into account in the draft.

95. The associations are regularly invited to the meetings of parliamentary committees, but it is very often the case that MPs (including those from opposition parties) do not take their proposals into account. Where the associations' participation in national coordination structures is concerned, the three associations (Association of District and Regional Authorities, Association of Ukrainian Cities and Association of Village and Settlement Councils) are represented in the "constitutional assembly" set up in 2012 to prepare the constitutional amendments needed with a view to territorial reform. Furthermore, the central executive bodies are required, before setting up advisory or consultation bodies or working groups, to ensure that representatives of the associations will be able to participate.

96. Where the procedures for preparing fiscal estimates for the purposes of budgetary planning are concerned, the associations are consulted but not included in the administrative process. There are nevertheless some examples, over and above consultation in the strict sense of the term, of co-operation and consultation between the associations and the government. For instance, the Association of Village and Settlement Councils has signed a memorandum with the Ministry of Agriculture concerning the "Village birthplace" project, which is intended to enhance the image of small villages and settlements.

97. Although Ukrainian legislation places at the disposal of local authorities a set of impressive local powers, the complexity of the legislation, the absence of a clear and traceable vision of the division of powers between the different tiers and the interference that occurs between activities at different levels of governance (particularly through the local and regional activities of central government departments) limit both the scope of Article 4 (2) of the Charter and the full discretion of local authorities to "exercise their initiative". In the rapporteurs' view, Ukraine is only partly complying with this provision of the Charter.

98. Where the right of consultation for which Article 4 (6) of the Charter provides is concerned, the rapporteurs feel that the law does provide for formal procedures in conformity with the Charter, and that, in practice, the mechanisms in place seem to function effectively. The rapporteurs nevertheless noted complaints from local authorities that their viewpoint was frequently not taken into account.

### **4.3 Article 5 – Protection of local authority boundaries**

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

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

99. Article 85 (29) of the Constitution includes among the powers of the *Verhovna Rada* "establishing and abolishing districts, establishing and altering the boundaries of districts and cities, assigning inhabited settlements to the category of cities, naming and renaming inhabited localities and districts". According to Article 93 (13), only the laws of the country, a presidential decree or another administrative act can alter the territorial structure of Ukraine.

100. Article 26 (41) of the Law on local self-government in Ukraine gives city councils power to decide on administrative and territorial division. Article 15 (1) of the Law on local self-government in Ukraine allows amalgamations "or other forms of optional unification". Whether or not to amalgamate administrative territorial units with a common administrative centre is an issue which may be decided solely through a local referendum (Article 6 of the Law on national and local referendums).<sup>37</sup> In this context, it is important for a clear and comprehensible explanation of the need to alter boundaries to be given to the public. Although the laws provide for prior consultation, the need for a reform of territorial structure is obvious. In this respect, the Association of Village and Settlement Councils is in favour of a flexible policy directed to making decisions on amalgamations of communities on a voluntary and not compulsory basis. Whatever the case may be, Article 5 of the Charter requires consultation of the authorities concerned, irrespective of the instrument of amalgamation adopted.

<sup>37</sup> See CDLR, Structure and operation of local and regional democracy, Ukraine, Situation in 2010, page 15, para. 2.4

101. Ukrainian legislation therefore complies with the Article 5 of the Charter.

#### 4.4 Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

##### Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

- 1 Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
- 2 The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

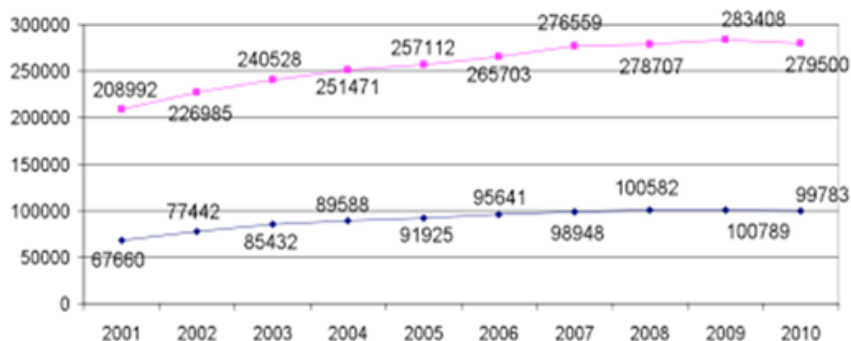
102. Cities, villages and settlements have the power to organise the structures of their administrative departments. Furthermore, in pursuance of Article 140 (5) of the Constitution, city councils have power to organise “the administration of city districts”, whereas Article 140 (6) allows village, settlement and city councils to create “popular self-organisation bodies” (Article 14 of the Law on local self-government in Ukraine). Article 26 (5 and 6) of the Law on local self-government in Ukraine does conform to Article 6 of the Charter in that it gives powers to city, village and settlement councils.<sup>38</sup>

103. More generally, because of serious budgetary problems, the questions of both the structures of local and central government departments and administrative staff at local or regional level remain current. In pursuance of its stand-by arrangement with the IMF, Ukraine has undertaken, where its administrative departments and their staff are concerned,<sup>39</sup> to effect a public administration reform in order to reduce the number of units and make them more efficient, and to adopt restrictions relating to pay rises for central and local government civil servants.

104. In this context, it should be noted that Ukraine has experienced a fairly large rise in the number of central government civil servants. The chart below shows the increase in staff numbers and their distribution between the different administrative tiers. The increase seems to be due to an expansion of central government’s sector of administration, resulting in particular pressure being brought to bear on the State to rationalise its own administration in one of the following ways:

- reform to increase the effectiveness and efficiency of administration;
- a systematic examination and redistribution of powers, based on the devolution and rationalisation experience of civil services in other European countries;
- reform of the administrative structure of central government at local and regional level;
- privatisation of the tasks hitherto reserved for central government or, where applicable, local authorities.

105. Changes in the numbers of civil servants working for central government (upper curve) and local authorities (lower curve)<sup>40</sup>:



<sup>38</sup> Article 26 (5): “to approve, as proposed by the mayor of the village, settlement or city, the structure of the executive bodies of the council, the number of staff of the council and executive offices and the expenditure linked to their operation”; Article 26 (6): “to create other executive offices of the Council as proposed by the mayor of the village, settlement or city”.

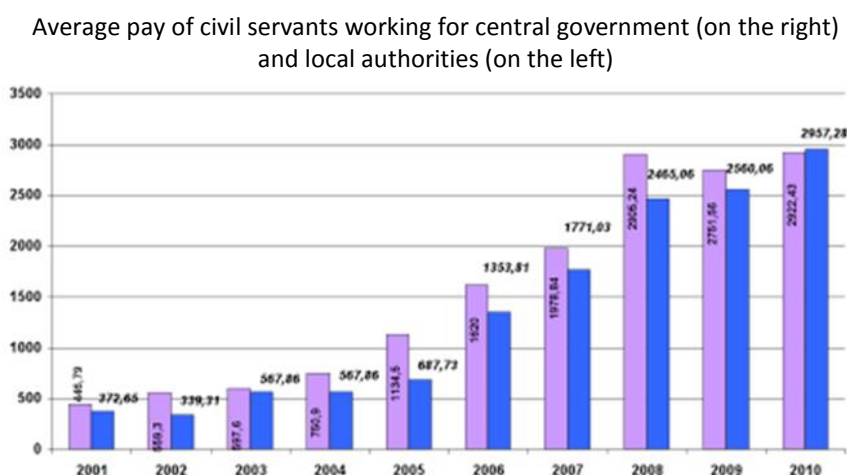
<sup>39</sup> <http://www.imf.org/external/np/loi/2010/ukr/121010.pdf>. IMF, Ukraine: Letter of Intent and Technical Memorandum of Understanding, 10 December 2010, see paragraph 12.

<sup>40</sup> Source: Ukrainian national agency for the civil service, 2 September 2011.

106. While it is planned to delegate powers to local authorities, reforms are needed at the same time to make local administrative offices more efficient, with particular emphasis being placed on staff skills, so that large-scale transfers of staff from one tier to the other do not fail to bring about any improvement in the performance of the administrative machinery. Self-evidently, most local authorities, which are of relatively modest size, are unwilling to embark on such reform, or lack the capacity to do so, without a huge amount of assistance from central government.

107. The Ukrainian national agency for the civil service is currently working to update civil service staffing levels and working hours. The associations are participating in this work with a view to communication of the figures relating to the local and regional civil service. Where staff status is concerned, the government has withdrawn a draft law concerning "local civil service status", which had been strongly opposed by the associations. A new draft is to be prepared, bringing the reform of the national civil service more closely into line with that of the local civil service.

108. On the subject of national and local civil servants' pay, the chart below gives a few significant indications.<sup>41</sup> The steep rise in local civil service pay between 2005 and 2008 has slowed down in recent years. Average local civil service pay, which declined in 2009, remains stable.



109. In formal terms, Ukrainian legislation is in conformity with the provisions of Article 6. In practice, however, given the pressure for rationalisation at local level and the low administrative capacity of small entities (particularly rural ones), authorities' freedom to determine their own structures within the meaning of Article 6 of the Charter is hardly respected.

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

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

- 1 The conditions of office of local elected representatives shall provide for free exercise of their functions.
- 2 They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
- 3 Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

110. According to Article 141 (3) of the Constitution, "The status of heads, deputies and executive bodies of a council and their authority, the procedure for their establishment, reorganisation and liquidation, are determined by law". The details are governed by the Law on the status of members of local councils<sup>42</sup> and the Law on local self-government in Ukraine. A draft law also exists on "mechanisms for the dismissal of councillors".<sup>43</sup> Where the fight against corruption is concerned, Law No. 320-VI of 7 April 2011 also applies to members of local and regional councils.

<sup>41</sup> Source: *ibid.* UAH 100 was equivalent to EUR 9.24 as at 9 May 2012.

<sup>42</sup> For more details about this status, see CDLR, Structure and operation of local and regional democracy, Ukraine, Situation in 2010, pages 19 et seq, section 5: Status of local elected representatives.

<sup>43</sup> See press release issued by the Association of Ukrainian Cities on 11 March 2013.

111. Elected members of a council or one of its executive bodies are remunerated as civil servants working on a full-time basis. That remuneration is subject to taxation.

112. Where the fight against corruption at national level is concerned, the rapporteurs took note of a communication of the Interior Minister dating from 2012<sup>44</sup> and of the legislative measures taken to remedy this problem.<sup>45</sup> The rapporteurs were told that the dismissal of the mayors of several cities of Ukraine, in the regions of Sumy, Yuzhne, Chernivtsi and Ternopil, had given rise to a discussion in the associations of whether the strengthening of the anti-corruption legislation had not served as a pretext for starting disproportionate legal proceedings against these mayors.

113. Women's participation in local political life is more marked in villages and settlements, where 50% of mayors and 70% of councillors are female. The figure in *oblasts* is around 15 to 20%. In the city of Dnipropetrovsk, for example, 20 of the 120 councillors and 72% of the administrative staff are women.

114. Overall, Ukrainian legislation complies with the principles laid down in Article 7 of the Charter. That said, where the application of paragraph 1 is concerned, the rapporteurs are concerned about the allegations made to them relating to cases in which mayors had been dismissed, cases considered to be arbitrary, based on application of the Law against corruption. Whether or not such allegations are justified, since such dismissals have not been followed by elections, the office of mayor of the authorities concerned has remained vacant for a very long time (and sometimes for years), and this clearly raises a problem in terms of local democracy, particularly from the viewpoint of Article 7 (1) of the Charter.

#### **4.6 Article 8 – Administrative supervision of local authorities' activities**

##### **Article 8 – Administrative supervision of local authorities' activities**

- |   |   |
|---|---|
| 1 | Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.   |
| 2 | Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities. |
| 3 | Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.  |

115. Article 20 of the Law on local self-government in Ukraine states that “central government supervision of the activities of the bodies and staff of self-governing authorities may be exercised only on the basis, and within the limits, of the powers and procedures for which the Constitution and the laws of Ukraine provide, and may not extend to interference by the bodies or staff of central government authorities in the exercise by self-governing authorities' bodies of the exclusive powers delegated to those bodies”. Furthermore, Article 35 of the Law on state administration at local level lists several principles of co-operation between central government units and local authorities, which are also relevant to the execution of administrative supervision:

- interaction;
- assistance to local officials by central government staff;
- statutory limitation of the supervision exercised;
- the taking into consideration of the proposals of the bodies and officials of local units;
- the giving of advance notice to local authorities in the event that issues important to the local level are to be dealt with by central authorities;<sup>46</sup>
- the power to participate in discussions on such issues;
- the power to participate in, and to speak at, meetings of local authorities' bodies;

<sup>44</sup> [http://www.kyivpost.com/news/opinion/op\\_ed/detail/125818](http://www.kyivpost.com/news/opinion/op_ed/detail/125818).

<sup>45</sup> See the Law against corruption, of 14 May 2013. This law reduces to UAH 80,000 the threshold above which civil servants are required to declare extraordinary income, and increases the numbers of senior officials obliged to declare this kind of income.

<sup>46</sup> Article 35 (2) of the Law on state administration at local level, of 1999, states that when the state administration at local level deals with issues affecting the interests of local authorities, it must inform the corresponding self-governing bodies beforehand. The representatives of those bodies and the staff of local and regional authorities are entitled to participate in the work done on these issues by the state administration at local level, and their comments and proposals must be registered.

- prohibition of interference in local authorities' affairs.

116. The rapporteurs believe that the law, in substance, safeguards compliance with the principles laid down in Article 8 of the Charter in respect of administrative supervision of local authorities. Where practice is concerned, the rapporteurs were informed of allegations related to over-control of local authorities, such as indirect pressure put on elected local elected representatives by the local state administrations, resulting in the removal of Mayors (for example in Cherkassy). These allegations, if true, are serious cause for concern for the rapporteurs as to the extent of this supervision, which would in these cases not be considered to be proportionate as required by the Charter. .

#### 4.7 Article 9 – Financial resources of local authorities

##### Article 9 – Financial resources of local authorities

- 1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
- 2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
- 3 Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
- 4 The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
- 5 The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
- 6 Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
- 7 As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
- 8 For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

117. Representatives of local and regional authorities presented a number of structural problems which, they believe, characterise the financial architecture of local and regional authorities in Ukraine:

- lack of progress in the consolidation of the local financial system since 2001;
- complicated budgetary programming at central government level, showing no respect for local and regional authorities' interests;
- structural weakness in local and regional authorities' financial powers;
- lack of proportion between own resources and the powers assigned;
- central government levies adversely affecting total revenue from local taxation;
- under-financing of the powers delegated by central government;
- absence of clear and comprehensible criteria on inter-budgetary relations;
- absence of appropriate equalisation at the level of regions (*oblasts*);
- need for stronger interaction/co-operation with the Ministry of Finance.

##### 4.7.1 General situation

118. Ukrainian local authorities' budgetary situation very much depends on the general economic and financial situation of the country. In economic terms, local authorities' budgets are very large: approximately 7.2% of the country's GDP is generated at local level (excluding inter-budgetary transfers). The Ministry of Finance estimates the total amount of local authorities' budgets for 2013 to be UAH 220 billion. Total expenditure in the 2013 national budget is UAH 410.66 billion, with a maximum deficit of UAH 50 billion<sup>47</sup> (including Naftogas with UAH 82 billion). In the first six months of 2013, expenditure totalled UAH 112.1 billion, i.e. 13.2% higher than in the same period of 2012.

<sup>47</sup> Budget Law for 2013, #11000.



119. Nevertheless, two preliminary factors are important: the level of per capita GDP, compared to that of emerging countries (as an indicator of the success or failure of an economic development policy and, therefore, of the need for reforms at every tier of government).

120. The chances of maintaining or striking a national budgetary balance in the medium term (as an indicator of the need to conduct a policy of budgetary discipline for the years to come in accordance with IMF declarations).

121. An analysis of the situation in Ukraine in 2011 (in terms of purchasing power), as compared to other countries of eastern Europe on the basis of IMF data<sup>48</sup>, is explicit enough: with a per capita GDP below EUR 10,000, Ukraine ranks below Serbia (approx. EUR 15,000), Croatia (approx. EUR 25,000) and Slovenia (approx. EUR 38,000), and lags far behind the countries of the Eurozone (approx. EUR 45,000). The country's backwardness in terms of competitiveness and potential growth in productivity, and in terms of the modernisation of administrative structures, is fairly clear to see. We need to know whether there are any signs of a positive development in GDP growth.

122. The general prospects of economic growth for Ukraine are not very promising,<sup>49</sup> although the government is placing a particular emphasis on reviving industry in the sectors with high technical and scientific potential,<sup>50</sup> and hopes that this policy will have positive effects on the labour market. International observers expect growth to decline in 2013, whereas the national budget for this year is based on GDP growth estimated at 3.4%.

123. Furthermore, another revealing statistic is the growth in total public debt between 2003 and 2013. Although the cumulative public debt fell slightly in 2011-2012 (around 40% of GDP), the situation is still tense, because the projections in the "stand-by arrangement" with the IMF are not being achieved, making it likely that the government will persist with its current policy, either by increasing revenue or by cutting expenditure, or by doing both. The leeway for a less tight budgetary policy vis-à-vis local and regional authorities is very limited.

124. The table which appears in Appendix III, based on data from the national statistics office, shows considerable discrepancies between Ukrainian regions in terms of annual income. The figures also show how important equalisation policy will be, if Ukraine decides to take action for regional development and to introduce vertical and horizontal financial equalisation. In this context, the Law on the stimulation of regional development,<sup>51</sup> which was amended in 2011, should be mentioned: according to the Ministry for Regional Development, the purpose of this law is to support the economic, social and ecological development of the regions, drawing on the EU's regional policy. It is based on a "regions in crisis" concept and lists a number of assistance measures from which these regions may benefit for a period of seven years (with a possible extension for a maximum of another five years). According to the Ministry, no such measures are being implemented in the regions which are in crisis. The figures in this table will therefore need to be checked to gauge the success or failure of the measures intended to balance the country's economic development.

125. A draft law on "the foundations of regional policy" is currently being prepared, with the associations' participation, with a view to implementing the decision taken by the Council of Regions in March 2013. This draft law is to define the main legal, economic, social, ecological, humanitarian and organisational aspects of Ukraine's regional policy.

#### 4.7.2 *Legal foundations*

126. Article 142 of the Constitution defines the material and financial foundations of local self-government. Article 142 (3) states that "The State participates in the formation of revenues of the budget of local self-government and financially supports local self-government. Expenditures of bodies of local self-government, that arise from the decisions of bodies of state power, are compensated by the state." The arrangements are detailed in Section III of the 1997 Law on local self-government in Ukraine. Article 62 of that law, in particular, contains provisions on the State's obligation to support local authorities financially, on the system of financial supervision, guarantees of a basic income and

<sup>48</sup> Source: Deuber, Schwabe, Der wirtschaftliche Fortschritt bleibt aus – Ukraine-Analysen n° 94, 13.9.2011.

<sup>49</sup> <http://en.interfax.com.ua/news/general/152300.html>.

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<sup>51</sup> Law of 8 September 2005, No. 2850-IV, on the stimulation of regional development, which came into force on 1 January 2006.

the criteria to be met, and on the conditions for State levies and the criteria applicable to local authorities' "minimum" budgets.<sup>52</sup> In 2011, several amendments came into force.<sup>53</sup> According to Article 66 (1), "local budgets must be sufficient to enable local authorities' bodies to exercise their statutory powers and to supply services to the public which guarantee a minimum level of social services". Article 7 (3) of the Budget Code sets down "the principle of the independence of the state budget and local budgets", while other fundamental provisions are in Section IV, "Inter-budgetary relations". The Fiscal Code and various other specific laws also contain some relevant provisions.

#### 4.7.3 Revenue

127. As to revenue, under the 2011 Tax Code, taxes and other national revenue (Article 9) include corporate taxes, income tax, value added tax (VAT), taxes on public enterprises and the initial registration of vehicles, environmental tax, taxes on the transport of petroleum products and the transit of natural gas and ammonia through Ukraine, petroleum taxes, customs duties and taxes for the exceptional use of water and forestry and agricultural resources.

128. Under Article 10 of the Code, local taxes and other local revenue<sup>54</sup> include property tax (other than land tax) and unified taxes. Local charges include administrative fees for special commercial activities, parking fees and tourist taxes. A new property tax was due to be introduced on 1 July 2012, which should have improved municipalities' tax situations. But it is doubtful whether the positive effects expected by the government will materialise. This tax affects only 1% of the buildings and will bring only 100 million UAH into the local budgets, which is not very significant. Moreover, local authorities cannot influence neither the administration nor the rates of the tax. Charges for administrative services are another important source of income. A draft law on the "list of administrative services and the related payments (administrative fees) for their provision" is currently being discussed by the associations and the relevant ministry.<sup>55</sup>

129. Local budgets are made up therefore of own resources, quotas of related national taxes and state transfers. Own resources also include taxes on the profits of local enterprises, payments by enterprises to local land-owners and income generated by the privatisation of local enterprises or by property management.<sup>56</sup> The most important tax is the income tax (the advertising tax has been abolished recently). With the reforms of 2011, Ukraine is working towards increased tax competition between municipalities, a simplification of the tax system and, in principle, an increase in the size of local authority budgets.<sup>57</sup> Apparently, these measures have not (yet) brought about an increase in local authorities' own resources although there has been a major change in Kyiv, where the city's revenues rose by 15.4% between 2011 and 2012.<sup>58</sup> The Ministry of Finance states that local government revenue was stabilised in 2012 through a series of government measures including an expansion in the sources of revenue, which produced a total of UAH 11.3 billion in tax revenues.

130. Municipalities encounter some difficulties where it comes to managing taxes, as the Ukrainian tax system as a whole is overly complicated. Experts from the World Bank reported that there were 135 different types of tax in Ukraine.<sup>59</sup> During the visit, government representatives repeatedly emphasised the importance of the local authorities' economic commitment and the rapporteurs are

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<sup>52</sup> Article 62 - Participation by the State in the provision of revenue for local budgets

*The State shall support local self-government, participate in the provision of revenue for local budgets, exercise supervision in order to monitor the lawfulness, appropriateness, benefit and effectiveness of expenditure, and also audit the accounts. The State shall guarantee to the bodies of local self-government a sufficient revenue base to supply a minimum level of services to meet public demand. If the revenue from national taxes and duties assigned to local budgets exceeds the minimum local budget threshold, the State shall take the surplus from the local budget for the benefit of the national budget, in accordance with the procedure laid down by the national Budget Law.*

*Minimum local budgets shall be defined on the basis of budget estimates per capita, in compliance with the economic, social, natural and ecological conditions in the corresponding areas, and on the basis of the minimum level of social needs defined by law.*

<sup>53</sup> Budget Code, see <http://zakon1.rada.gov.ua/laws/annot/en/2456-17>, and taxation, see <http://zakon1.rada.gov.ua/laws/annot/en/2755-17>

<sup>54</sup> The CDLR document, Structure and operation of local and regional democracy, Ukraine, situation in 2010, gives a list of the most important own resources in section 28 (p. 24).

<sup>55</sup> See: AUC press release of 15 April 2013: <http://www.auc.org.ua/en/news/experts-are-scrutinising-draft-law-determine-list-administrative-services-and-related-payments>

<sup>56</sup> [http://www.ukrinform.ua/eng/news/uah\\_795\\_million\\_comes\\_to\\_budgets\\_from\\_land\\_sale\\_\\_\\_state\\_agency\\_302803](http://www.ukrinform.ua/eng/news/uah_795_million_comes_to_budgets_from_land_sale___state_agency_302803)

<sup>57</sup> Law No. 2456-VI of 8 July 2010.

<sup>58</sup> [http://www.ukrinform.ua/eng/news/kyiv\\_tax\\_office\\_collects\\_almost\\_uah\\_10bn\\_in\\_taxes\\_281851](http://www.ukrinform.ua/eng/news/kyiv_tax_office_collects_almost_uah_10bn_in_taxes_281851)

<sup>59</sup> <http://www.nrcu.gov.ua/index.php?id=475&listid=166136> of 12 March 2012

convinced therefore that the state, which has powers in the tax sphere, also has a particular responsibility for establishing a simple, transparent and efficient financial system.

131. Simplifying the organisation of local taxes and fees would also form part of this new system. Existing structures are so complex that tax collection is scarcely profitable. In response to this problem, in 2011, the state amended the Tax Code. It replaced 12 low-revenue taxes with only five (taxes in the transport, tourism and business sectors and a value added tax on business purchases). However, some local authorities complain that the situation has deteriorated: ten local taxes have been abolished or transferred to the state, including taxes in the transport and procurement sector. According to officials from the city of Ivano-Frankivsk, the new Tax Code, which came into force on 1 January 2011, has caused a loss of revenue of UAH 20 million out of a total of UAH 670 million in budgetary revenue. In addition, subsidies for the education and public health sectors have been reduced by UAH 20 million. At the same time, the single tax was not part of the taxes included in the calculation of transfers (i.e. from the so-called “basket of profits”) and transferred to the development budget. Moreover, payment for land currently goes into the budgets of towns, villages and rural settlements. (Previously 60% went to the towns of local importance, villages and rural settlements and 75% to the towns of regional importance.) Consequently, the loss from market change has been almost compensated, although, for a number of towns, for example for Khmelnytsky, the market change was very significant.

132. The example of property tax illustrates some of the typical features and problems of local taxation:

- The tax base was restricted by a wide range of exceptions and exemptions (according to the Ministry of Finance, in 2003, these exemptions amounted to 66.7% of fiscal capacity).
- There is no competition between local authorities owing to the upper limits that are placed on charges.
- The administrative costs of tax collection are very high.
- The entry into force of the new property tax was put back from 1 January to 1 July 2012. The calculation processes are complex and the entry into force could be deferred still further. Several amendments enhancing local authorities’ tax capacity were introduced through the reform of the Budget Code in 2011.

133. The association therefore asks for the tax base to be broadened and for there to be fewer exceptions and exemptions so that local authority revenues can be increased.

134. As to the profits of local enterprises, because the state has consistently limited charges for housing or public services at local level, most local enterprises are in debt and cannot make the profits that would enable them to make the necessary investments.

135. The local authorities receive revenue from personal income tax. The rate of this tax is, however, limited to 15% and has not changed, so that the revenue it creates for authorities depends on economic activity and, in particular, on wage increases and the employment situation, in other words the number of people liable for tax. Furthermore, a vast network of exemptions limits the base of this tax. Lastly, this tax causes inequality between local authorities because it is collected according to the person’s workplace. It favours “rich” cities, reduces the scope of the tax in rural zones and makes a system of financial equalisation necessary. Rural authorities depend largely on state subsidies because their revenues from this tax are low.

136. To strengthen the economic base of local communities in the medium term, the rapporteurs propose to increase the production of clean, renewable energy<sup>60</sup> but this possibility has largely been overlooked in Ukraine until now. Geothermal, solar and wind energies, together with biofuels and waste burning, accounted for 0.71% of primary energy production in 2008 whereas nuclear power (28.8%), coal (41.4%), natural gas (22.1%) and oil (5.3%) provided a large share of the country’s energy. However, the potential for the incomes of municipalities to be increased by an increase in the production of renewable energies is considerable. It would result among other things in a growth in the direct profits of local energy production companies (which are not subject to financial equalisation), an increase in the incomes of the employees of production plants, the management of resources at local level instead of buying energy from abroad and stabilised incomes for renewable energy producers.

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<sup>60</sup> <http://www.bloomberg.com/news/2012-09-28/ebd-to-lend-10-million-for-ukrainian-municipal-energy-project.html>

137. The "underground economy" reflects an undeniable reality in Ukraine and implies a considerable reduction of tax revenues,<sup>61</sup> the government is currently considering the possibility of lowering personal income tax (from 15 to 10%). Such a measure would also have an impact on local authorities, but without a reform of the legislation on pensions, it will have no impact on wages in terms of bringing them closer to those of the "shadow economy".

#### 4.7.4 *The budgetary system*

138. The Ukrainian budgetary system is divided into two levels: the state budget and the local authority budgets (12 086 in total). A vertical inter-budgetary transfer is made between the two levels and the state has inter-budgetary links with 692 budgetary systems at local and regional level.

139. The main aim of inter-budgetary transfers is to balance local and regional authority budgets<sup>62</sup>. They are calculated according to general criteria on the basis of Cabinet Decree No. 1149 of 8 December 2010. For the calculation, the key indicator is the balancing coefficient which is used to calculate the amount of tax revenue left over for use by regions and communes with surpluses. The previous system did not include any incentive measures, whether aimed at regions in debt, to encourage them to increase their own tax resources (as debts were covered more or less by state transfers) or at regions with surpluses, to encourage them to increase their tax revenues, as surpluses were capped by the state. Despite a few amendments made to the method to calculate tax capacity (Articles 64 and 66 of the 2011 Budget Code), there has been no change in the coefficient system or the high degree of centralisation of inter-budgetary relations.

140. The total value of inter-budgetary transfers comes to 44% of the state budget, 42% of which goes into the general fund. Special transfers are made with the specific goal of guaranteeing comparable levels of social protection and fostering local and regional economic and social development (particularly in the building and construction sector). Amounts of equalisation are calculated on the basis of individual inhabitants (and consumers of local services) and while attempting to strike a balance between the revenue and expenditure of local and regional authorities. The Budget Code establishes which local revenues are to be included in the inter-budgetary transfer system (Articles 64 and 66 (AR of Crimea)) and which must not be included (Article 69). Through this mechanism the state can increase or reduce the fiscal importance of these revenues for the local authorities which impacts their autonomy within the meaning of Article 9, paragraph 1 of the Charter, by including particular types of local authority revenue in the inter-budgetary relations system or excluding them from it. As a result the system lacks transparency and is relatively complex and unstable, making the local tax system somewhat unpredictable. Furthermore, there is little interest for an authority in setting up a "financially advantageous" tax in the medium term if it must fear that this source of revenue will ultimately be incorporated into the state's inter-budgetary system.

141. Some local authorities complain about the criteria for the distribution of transfers, which give the state wide-ranging discretionary powers, or object to the total lack of equalisation criteria. As to the regional development fund (Article 24(1) of the Budget Code), it comprises funds equivalent to 1% of the national budget, which amounted to about UAH 400 billion in 2013. Of this amount, 1% (UAH 4 billion) is earmarked for the fund. Seventy per cent of the fund is allocated according to the number of inhabitants in each region while the other 30% takes account of criteria linked to their economic strength. UAH three billion is allocated for economic and social development.<sup>63</sup> Added to this are various grants (such as UAH 3 billion for national roads). UAH 1.4 billion is reserved to finance projects of national importance. These funds were allocated by the *Verhovna Rada's* Budget Committee as follows: 50% was assigned to the regions but eight regions received nothing, three regions received 70% of the allocation and the others shared the remainder. Despite the criteria that were set for the allocation of the funds (Cabinet Decision No. 6565 of 4 July 2012) decisions were taken for political motives. When the funds were allocated to the regional development fund, the allocation criteria were modified in parliament.

<sup>61</sup> [http://www.focus.de/finanzen/news/wirtschaftsticker/konjunktur-ukraine-will-schattenwirtschaft-mit-steuerreform-bekaempfen\\_aid\\_783814.html](http://www.focus.de/finanzen/news/wirtschaftsticker/konjunktur-ukraine-will-schattenwirtschaft-mit-steuerreform-bekaempfen_aid_783814.html) (in German). 54% of revenue in 2012 was transferred to the Treasury.

<sup>62</sup> [http://www.slg-coe.org.ua/wp-content/uploads/2012/10/CoE-Policy-advice-on-the-Allocation-of-Inter-Budgetary-Transfers\\_2011.pdf](http://www.slg-coe.org.ua/wp-content/uploads/2012/10/CoE-Policy-advice-on-the-Allocation-of-Inter-Budgetary-Transfers_2011.pdf)

<sup>63</sup> However, in 2013, despite legal requirements, only UAH 980m. was allocated to the Regional Development Fund, instead of UAH3.4 billions. Furthermore, regional quotas for preparation of projects which are to be financed from the Regional Development Fund in 2014 still have not been defined, although the law stipulates that these projects should be submitted by 1 May of the year which precedes the planned year.

142. The example of the regional development fund illustrates another structural problem with Ukraine's budget programming. Although the introduction of budget planning based on specific programmes theoretically allows for more accurate allocation of funding, it is necessary to frame the goals to be achieved as precisely as possible. Yet, firstly, there is a very large number of specific programmes – the City of Kyiv alone is supposed to be implementing around thirty – and, secondly, goals are often set according to quantitative not qualitative indicators. There is therefore a risk both that programmes will overlap (for example, in rural areas, forty different programmes, whose timeframes have sometimes partly overlapped, have been adopted since 1991) and that the programmes are not suited to the aims that have been set or, worse still, that there was no justification for the funds to be allocated in the first place.

143. It is also problematic that the majority of *oblasts* do not have Strategic Development plans, and therefore cannot define priorities for using the financing from the Fund. As a result, the projects which are submitted for government approval are not the projects designed for resolution of the issues of local development, but for construction of facilities intended for social needs (schools, hospitals).

144. Another problem has to do with the application of budgetary rules to small local entities. They are also subject to the Budget Code but their situation is very different as they have small populations, a high number of retired inhabitants and, generally, a low tax capacity. Consequently, the authorities in these villages or settlements, particularly those in rural areas, ask for the regulations to be adjusted to their special circumstances. It is to be hoped that the 2011-2015 Programme for the Development of Small Villages (Cabinet Decision No. 1090 of 29 November 2011) will provide a means of strengthening the economic and budgetary situation of this type of authority, knowing that 75% of village councils cannot carry out their responsibilities provided by this law.

145. Local and regional authority budgets are divided into two components (Article 13 of the Budget Code). The first is a “general” fund, which is used to finance general compulsory spending (basket 1, Articles 88 to 90 and 64 to 66 of the Budget Code) and the second a “special” fund, used to finance specific projects (basket 2, Articles 91, 69 and 71 of the Budget Code).

146. According to the Ministry of Finance, taken as a whole, 40% of local and regional authority budgets come from state transfers and 60% from own resources (local personal income taxes). Local and regional authorities' own resources are not included in the equalisation system. On the other hand, according to the information provided by the Association of Ukrainian Cities, local budgets are increasingly dependent on state transfers (43.3% in 2007, 46.7% in 2009, 52.3% in 2011 and 53.6% in 2012).<sup>64</sup>

147. During its visit, the delegation was told that 98% of first-component expenditure was destined to cover mandatory expenses resulting from the execution of delegated powers and staff wages. The local and regional authorities regret the fact that the state only pays about 80% on average of the necessary transfers to cover mandatory expenses. In their view, the situation could deteriorate still further in 2013, as the state is missing about UAH 30 billion to cover these expenses. The result is a structural deficit of 20% of the first component, which contains the major local revenue of personal income tax (at a maximum rate of 15%).

148. Local authorities therefore finance both delegated state powers and this 20% deficit<sup>65</sup> through their own resources. About 10% of the first and second components combined are covered by local authority's own resources. Half (5%) is used to fund delegated powers in the first component of the budget. The second component is financed by local company tax. Authorities have the right to negotiate short- and medium-term loans with the Treasury<sup>66</sup> under conditions set by Article 73 of the Budget Code.

149. It should be noted that changes to the Budget code were introduced in 2012 in terms of the transfer of some taxes to the second basket of revenues in the oblast budgets and the budget of Autonomous Republic of Crimea. Their amount is estimated to be UAH 1 billion. They will allow to improve the condition of the *oblast* budgets significantly, primarily in terms of financing the preparation

<sup>64</sup> Source: AUC, Local Self-Government in Ukraine 2012

<sup>65</sup> See Association of Ukrainian Cities, “Local Self-Governance in Ukraine, 2012”, p.3.

<sup>66</sup> The detailed conditions concerning medium-term loans are set out in Decision No. 1204 of the Cabinet of Ministers of 29 December 2010.

of technical documentation for projects which are financed from the Regional Development Fund and also for co-financing these projects

150. According to the national audit office, local and regional authorities do not always manage state funds "properly". Sometimes funds are misappropriated in various ways such as the use of funds for different purposes than those outlined in the relevant documents, failure to invest funds properly for want of a precise timetable and the reallocation of unused resources.

151. With regard to the issue of misappropriation of national funds by local authorities, the national audit office investigated some examples in 2012 which were linked to development funds connected with investments for the 2012 European football championships. The City of Ternopil failed to comply with the funding conditions, and used funds which should have been reserved for investment in infrastructure to finance wages for doctors, teachers and others. In such cases, the legislation provides for penalties against the officials concerned and the possibility of asking for the funds allocated by the state to be reimbursed. The associations emphasise that the inability of local authorities to comply with their budgetary obligations very often stems from the shortcomings of the inter-budgetary system that has been set up.

152. According to the national audit office it is important for local authorities to use state funds more efficiently. The audit office would be prepared to co-operate with the authorities to improve the application of the rules but to date, no towns have contacted it to ask it for help in improving internal auditing procedures at local level. The audit office has, however, received such requests from ministries. The legislation will have to be amended for there to be any increase in the influence of the audit office on the local and regional authorities.

153. Opinions differ as to the efficiency of the Treasury. The Deputy Minister of Finance's views are based on the fact that the Ukrainian Treasury's system is characterised by daily payments. In his opinion, the system functions and ensures that financial operations take place in real time. For the authorities, the fact that all financial operations pass through the Treasury has a negative effect as the Treasury can delay or prevent payments in order to "manage its cash flow" and hence control the whole procedure. The associations therefore demand that an amendment be made to the legislation to increase the liability of the offices of the Treasury when there are irregularities in financial operations.

154. There has also been some criticism about a certain lack of efficiency in collecting taxes on the part of the various state authorities, which are accused of being incapable of guaranteeing fair and regular taxation. The city of Ivano-Frankivsk has set up a special committee to deal with tax problems in co-operation with the tax authorities, the employment office and social services. Most of Ukraine's districts and regions have set up a consultative committee of this type.

155. As to Ukraine's budgetary procedure, the local and regional authorities assert that more co-ordination is needed with the relevant government departments. Under Article 75 of the 2011 Budget Code information must be disseminated about the method of calculation, at national level, of funding destined for local budget projects. The authorities have introduced a new method of budgetary programming at local level, which, according to the Ministry of Finance, should make medium-term programming easier and optimise the use of financial resources. This method will be used in 2013 by some 700 Ukrainian municipalities.

156. With regard to the forms of interaction between the local and central tiers of government in the sphere of public finance, in 2004 the IMF proposed that an intermediate institution should be established to analyse and prepare decisions on the country's budgetary policy. The rapporteurs take the view that a rule should be introduced into the national budgetary procedure that local authorities should always be consulted first so that they can be more closely involved in estimating tax revenues and so that it is easier to prepare local budgets in the course of the year. This would ease the process of passing on the effects of national tax reform to local budgets. Similarly, the publication of tax data at regional level should be stepped up. The Rapporteurs believe that this kind of co-ordination between the association of local and regional authorities on the one hand and the relevant ministries on the other, under the responsibility of the Ministry of Finance, could significantly improve the co-ordination of the budgetary policies of the two tiers of government. In order to avoid a constant planning of deficit for the cost of implementing the "delegated" competences, it is reasonable to define and formalise the overall size of expenditures for the implementation of such competences in the legislation.

157. The rapporteurs consider that in practice, in view of the restrictions on the system of inter-budgetary relations, the situation of Ukraine's local finances does not fully meet the requirements of Article 9 of the Charter as regards the need to have a stable and independent financial basis and sufficient own resources. The rapporteurs believe that strengthening the local authorities' financial autonomy should form part of Ukraine's local government reform agenda in order to bring the situation into line with Article 9. The situation in this respect, as the rapporteurs see it, does not make it possible to find that all the paragraphs of this article are being complied with.

#### 4.8 Article 10 - Local authorities' right to associate

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

- |   |   |
|---|---|
| 1 | Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.               |
| 2 | The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State. |
| 3 | Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.  |

158. One particular demand from the associations relates to the issue of strengthening co-operation between local authorities. Article 142(2) of the Constitution makes provision<sup>67</sup> for local authorities to co-operate within the meaning of Article 10 of the Charter. A draft law on co-operation between local authorities was supposed to strengthen co-operation between municipalities still further (Cabinet Decision No. 169 of 29 February 2012).

159. The rapporteurs have noted with satisfaction the establishment, in 2002, of the Congress of Local and Regional Authorities of Ukraine by the three national associations that have signed an agreement and adopted a charter with the aim of coordinating the decisions between the associations, the presentation of proposals to the government to strengthen local democracy and the development of contacts with international organisations. The conference consists of three Chambers (villages, towns and regions). Each Chamber is composed of 100 delegates. The plenary session requires a quorum of at least 50% of the delegates from each Chamber. Decisions are taken by a majority of the delegates present. The Congress has a Council made up of 12 representatives of the associations, which manages the daily operations, adopts the agenda of the plenary session, approves the composition of the Chambers and manages the budget.

160. The explanations given above in section 4.2 show that there is a well-established official consultation procedure. In addition, the associations regularly send memorandums to the government describing problems they have encountered or commenting on relations between institutions.<sup>68</sup> The rapporteurs have not been able to ascertain whether the government replies to the associations' comments – and if so, within what timeframe. It should also be noted that the associations have negotiated "co-operation agreements" with a number of relevant ministries for the preparation of draft administrative legislation and regulations.<sup>69</sup>

161. As to transfrontier co-operation, by way of an example, the city of Ivano-Frankivsk has said that it is a member of twenty municipal twinning schemes. With financial assistance from the EU (EUR 800,000), the city takes part in a transfrontier co-operation project with Romania. Other projects are implemented with the support of the European Bank for Reconstruction and Development (EBRD), with the authorisation of the state, and the Nordic Environment Finance Corporation (NEFCO).<sup>70</sup>

162. Ukraine therefore complies with Article 10 of the Charter in law and in practice. However, it does still need to be ascertained whether the draft law mentioned above will provide for genuine local self-government in terms of co-operation and the right to associate or if state pressure to increase

<sup>67</sup> On the basis of an agreement, village, settlement and city authorities may pool municipal resources and budgetary funds to implement joint projects or jointly finance (or manage) municipal enterprises, organisations or establishments and to set up the bodies and services required for this purpose.

<sup>68</sup> See for example the document presented by the Association of Ukrainian Cities on 1 July 2011, at the 7<sup>th</sup> Forum for Municipal Dialogue.

<sup>69</sup> For an example of such an agreement, between the AUC and the Ministry of Economic Development in 2012, see the AUC press release of 15 April 2013.

<sup>70</sup> Nordic Environment Finance Corporation : <http://www.nefco.org/>

co-operation between municipalities will undermine or may undermine local authorities' freedom in their work.

#### **4.9 Article 11 – Legal protection of local self-government**

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

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

163. Article 71(4) of the Law on Local Self-Government of 1997 provides as follows: “The bodies and staff of self-governing authorities shall be entitled to appeal to the courts to establish the unlawful nature of acts of local bodies with executive powers, other local self-governing authorities, enterprises, institutions and organisations, which infringe the rights of local and regional authorities and undermine the powers of self-governing authorities.”

164. In 2006 Ukraine set up a system of administrative courts. These courts may declare the acts of the bodies and institutions referred to in Article 71 “which infringe the rights of local and regional authorities and undermine the powers of self-governing authorities and their representatives” unlawful.

165. The rapporteurs take the view that Ukrainian legislation complies with Article 11 of the Charter, which stipulates that there must be a right of recourse to a judicial remedy. However, the delegation was unable to obtain any information to assess whether and in what specific subject areas the local authorities have successfully appealed to the administrative courts. Nor is it clear whether the Charter has been used as a reference text in this type of judicial proceedings.

166. For all that, the rapporteurs encourage the government to consider adding a provision to the Constitution, which would give the local and regional authorities the right to appeal to the Constitutional Court against an act “addressed to” or of direct and individual concern to a legal person, in order to improve the legal protection of authorities.

## **5. Regional self-government: The Autonomous Republic of Crimea**

### **5.1 Legal aspects**

167. Article 133 of the Constitution includes the Autonomous Republic of Crimea among the various types of regional authority.<sup>71</sup> It grants the Constitution of the Autonomous Republic of Crimea the rank of a national law. As a result, the Parliament of the Autonomous Republic of Crimea has more powers than other entities at the same level such as *oblasts*. Another law (No. 3530-VI of 16 June 2011) sets out the powers and procedures of the Council of Ministers of Crimea.

168. Since 1998, under Article 10 of the Constitution of the Autonomous Republic of Crimea, Russian has been considered the official language in all spheres of public life and an inter-ethnic communication language, thus reflecting the fact that the Russian population is in the majority in Crimea and that the other ethnic groups also speak Russian. This privileged status for the Russian language exists only in the Autonomous Republic of Crimea.

169. Ukraine has ratified the European Charter for Regional or Minority Languages of the Council of Europe. Law No. 5029-VI of 3 July 2012 on the principles of national language policy includes a series of measures designed to encourage people to learn and use so-called minority languages under certain circumstances.

### **5.2 Political and economic aspects**

170. The rapporteurs note that the system of self-government in the Autonomous Republic of Crimea raises at least two separate issues: i) whether self-government in Crimea might be used as a model for increased regionalisation in Ukraine as a whole; ii) Crimea's room for manoeuvre with regard to

<sup>71</sup> The details are set out in Articles 134 to 139 of the Constitution, the Law on the adoption of the Constitution of the Autonomous Republic of Crimea of 23 December 1998 (No. 350-XIV) and the Law on the Autonomous Republic of Crimea, Verkhovna Rada of Ukraine, Law of 17.03.1995, No. 95/95-BP.



regional development compared with Ukraine's other regions, including issues related to compliance with the Charter in the management of self-government.

171. In relation to the first issue, none of the people we spoke to (representing the government, associations or the Autonomous Republic) was in favour of extending the Crimean model to the rest of the country (except for one demand concerning the existence of a "merged" executive body). This reluctance may seem surprising initially given that Crimea's population size (about 2 million) and surface area (26,000 sq. km) make it a model regional geographical entity similar to the regional bodies in countries such as Poland, France, Spain and Germany. It seems, however, that Crimea's geographical, economic, historical and ethnic situation is so different from that of Ukraine's other regions that it has been decided that while every political and economic effort needs to be focused on its social and economic development, it cannot serve as a regional development model for the whole country.

172. Three institutions have been set up to promote Ukraine's and the Autonomous Republic of Crimea's mutual interests.

173. Ukraine has a state representative in Crimea, who performs supervisory duties defined by the constitution under the authority of the President of Ukraine. Supervision of the ministries of the Autonomous Republic is arranged according to the general rules, particularly those regarding the State's delegated powers.

174. As far as relations between the Parliament of the Autonomous Republic and the Parliament of Ukraine are concerned, the Ukraine Parliament has a special committee for Crimean affairs and regularly examines activity reports.

175. The Chair of the Supreme Council of the Autonomous Republic of Crimea is also a member of the Co-ordinating Council of the President of Ukraine and hence takes part in the sessions of this body.

176. The financial and economic crisis caused a fall in GDP in Crimea of 15% between 2008 and 2009 whereas the decline for the whole of Ukraine over the same period was 9%. Crimea expects a great deal from the 2011-2023 Crimea Strategy, the main aim of which is to foster Crimea's economic development and which was drawn up at the instigation of the President of Ukraine (Order No. 11/1790 of 12 August 201) with the participation of the local authorities and EU and Russian experts, and approved by the Parliament of Crimea on 22 December 2010.

177. Currently, twenty specialised economic development programmes are being implemented. The strategy focuses on five priority areas (tourism, food-processing, industry, transport and environmental protection). Crimea has relations with 20 other European regions and with bordering Russian regions. Trade with Turkey has increased considerably in recent years.<sup>72</sup> Crimea is also working currently on the establishment of a Euroregion with the Russian region of Kuban.<sup>73</sup>

### **5.3 Local authorities in Crimea**

178. Local authorities play a key role in implementing the strategy. A clusters policy (networks made up mostly of small and medium-sized enterprises) is designed to reinforce local advantages. Regional development funds and subsidies from the Autonomous Republic are made available to local authorities (for the legislation relevant to the Autonomous Republic, see paragraphs 41 and 42 above).

179. In the area of financial powers, Crimea has a degree of freedom to take decisions. It may, for example, pay back some of the excise duties received for the consumption of certain products or grant subsidies to enterprises to promote the introduction of technological innovations. The representatives of the City of Simferopol complained about some of the adverse effects of regional planning. The decision to concentrate research and vocational training units in southern Crimea had disadvantaged Simferopol.

<sup>72</sup> <http://www.kyivpost.com/news/nation/detail/126151/ of 17 April 2012>

<sup>73</sup> [http://fr.rian.ru/world/20121009/196271490.html. \(in French\)](http://fr.rian.ru/world/20121009/196271490.html. (in French))

180. In the town planning sector, local authorities generally owned the land to be built on. Planning permission is not required in development areas. However, outside such areas, authorisation from the district or the relevant Crimean ministry is necessary to carry out urban development projects. As to future local government structures, Crimea is in favour of increased co-operation between municipalities and greater decentralisation.

181. Although the Constitution of Crimea (Article 7(1)) provides that Sevastopol's municipal bodies may act under the authority of the Parliament of Crimea, Sevastopol does not have a special status. According to some Crimean officials, Crimea's status gives it sufficient means to manage its own affairs. Overall, the development of local self-government in Sevastopol should be included in Ukraine's reform process.

## **6. Regional democracy: Development of regionalisation in Ukraine and Reference Framework for Regional Democracy**

### **6.1 Legal basis**

182. The Constitution of Ukraine does not recognise the autonomy of regional entities. According to Article 140(4) of the Constitution and Article 1 of the Law on Local Self-Government, the district and *oblast* councils are local government bodies and represent the common interests of the communities of the villages, settlements and towns. Since Ukraine made no reservations when it signed and ratified the Charter, Article 13 of the latter applies in its entirety, so that all the remarks in this explanatory memorandum (section 4) also apply to this type of locality.

### **6.2 Structures and bodies of the districts (*raions*) and regions (*oblasts*)**

183. Article 133 of the Constitution lists the territorial units at the level of the *raions* and *oblasts*, including the cities of Kyiv and Sevastopol. The *oblasts* thus have a constitutional guarantee and cannot be dissolved without an amendment to the Constitution, which is not the case with the *raions* (or districts), the system of which can be modified by means of a simple law (Article 85(29) of the Constitution). In this connection, mention needs to be made of two draft laws relating to Kyiv, one (no. 10584) aimed at reintroducing districts there,<sup>74</sup> another (no. 1032) at merging the offices of mayor and head of the state administration, and a third. (No. 2279) at clarifying the competences of the mayor (chief executive authority of the Council of Kyiv) and the head of the state administration in Kyiv.

184. As far as the distribution of political and administrative responsibilities between the bodies of the districts and *oblasts* is concerned, the rapporteurs wish to mention the specific problem of the functional interdependence between two distinct bodies.

185. Article 10(2) of the Law on Local Self-Government sets up councils as local government bodies and gives them the task of "representing the common interests of the territorial authorities". Article 43 defines the powers of these councils, which, inter alia, include the right to be consulted by representatives of the state administration and the possibility of tabling a motion of no confidence in the head of the state administration.

186. As far as the executive body is concerned, Article 118 of the Constitution provides: "The executive power in *oblasts* and districts and in the cities of Kyiv and Sevastopol shall be exercised by the local state administration".<sup>75</sup> With regard to co-operation between these two bodies, the Law on State Administration provides that the state administration "shall co-operate with the local government bodies" (Article 2(6)) and "shall carry out the tasks delegated by the local councils" (Article 14).

<sup>74</sup> See Press Bulletin of the Association of Ukrainian Towns of 5 November 2012.

<sup>75</sup> The details are laid down in section 58 of the Law on State Administration:

1 The executive body of the *raion* or *oblast* council shall exercise the council's powers described by the Constitution of Ukraine and by this law or other laws.

2 The executive body of the council shall provide organisational, legal, informational, analytical, material and technical support to meet the needs of the council's activities. These bodies and their members are required to promote the interaction and networking of the council concerned with the territorial communities, the local executive bodies and local government bodies and staff.

3 The executive body of the council shall be constituted by the council concerned. The structure, numerical composition and operating expenditure shall be determined by the council at the Chair's proposal.

4 The executive body of the council shall, ex officio, be placed under the authority of the Chair of the council concerned.

187. Consequently, the *raions/oblast* councils supervise the activities of the state administration operating at the same level of government. However, the separation of administrative functions at the level of the *raions/oblasts* between the state and the local/regional authorities on the one hand and the combining of these functions at the level of the towns/villages on the other are one of the most problematic issues in the context of sharing administrative responsibilities.<sup>76</sup>

188. The rapporteurs are of the opinion that this distribution presents a problem on several levels:

- The question of the exercise of clear and distinct powers (either by the elected mayor or by the head of the state administration appointed by the President) remains to be answered. The accountability of the elected representatives (mayor and councillors) is weakened by the fact that they are fully dependent on the support of the state administrations.
- The community, which, according to Article 140 of the Constitution, has the power to handle its affairs independently, is unable to exercise the genuine autonomy that reflects this independence.
- The inter-institutional relations between the council and the state administration need to be permanently co-ordinated because council members lack proper disciplinary powers vis-à-vis the administration staff.
- The sharing of responsibilities between the political power (the council) and the executive power (the state administration) is too detailed, too complex and too costly.

189. The separation of political and administrative powers at the level of the districts and regions is even more incomprehensible as these entities are the largest, most powerful and most active territorial units in Ukraine and would therefore be capable, if granted genuine powers of self-government, to provide their populations with proper services. Moreover, with the launch of the National and Regional Economic Reform Commission by the President in 2010 the importance of the regions with regard to economic development and attracting investment at the regional level has been strengthened.

190. As far as the situation of Kyiv is concerned, the Constitutional Court held in its judgment of 25 December 2003 (no. 21-rp/2003) on the specifics of the exercise of executive power and local self-government in the city of Kyiv that the “creation in the city of Kyiv of a single body from the organisational point of view that carries out the functions of the executive body of the Kyiv City Council and at the same time exercises the functions of the local body of the state executive fully complies with the requirements of Article 3, paragraph 1 of the European Charter of Local Self-Government, which defines local self-government as ‘the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population’”. The existence of a merged body at the level of the districts and regions is in compliance with the Charter.

191. The rapporteurs consider that defining certain key elements of the exercise of local government as a state matter is contrary to the conception of local self-government as defined in the Charter. In their opinion, Ukraine has therefore not yet exploited the possibilities provided by Article 132 of the Constitution, which, as far as the country’s territorial structure is concerned, provides for a combination of centralisation and decentralisation in the exercise of state power. Article 132 could pave the way for further decentralisation and, at a very minimum, the delegation of state powers to the local authorities. The rapporteurs took due note of the President’s speech of 11 January 2012 to the Economic Reform Commission calling for a broader transfer of powers and functions in favour of the regions<sup>77</sup> and encouraged the government to move in that direction.

### **6.3 Specific features of Kyiv (oblast)**

192. Kyiv, the capital of Ukraine, enjoys a special status governed by the Constitution (Article 133(3)) and by Law no. 401-IV of 15 January 1999 on the Capital of Ukraine.<sup>78</sup> The city has the status of an *oblast* and its administrative functions are carried out by a state administration at *oblast* level. The

<sup>76</sup> See also Nadiya Meltyukhova and Nataliya Doronina, “Interaction between the State Executive Authorities: European Experience and Lessons for Ukraine”, ISSN 1648-2603 • *Viešoji politika ir administravimas* • 2006. No. 16

<sup>77</sup> <http://www.president.gov.ua/en/news/22626.html>

<sup>78</sup> On the subject of the separation of administrative functions in favour of state unity, the Constitutional Court established the constitutionality of the Law on the Hero City of Kyiv in its judgment of 13 October 2005 (N-9/2005).

ordinary law specifies the functions of the city as the country's capital and the internal organisation of the districts.

193. With regard to the distribution of powers between the city (as represented by the mayor) and the head of the state administration in the city (appointed by the President of Ukraine), the mayor is tasked with implementing a political strategy, the discharge of official duties and the organisation of the work of the city council, while the head of the administration carries out functions relating to the execution of tasks and is obliged to implement the decisions of council members and state decisions. In addition, the deliberations of the city council play an important role in setting out the city's urban policy: around 30 operational activity programmes are underway and the involvement of citizens in planning work is guaranteed by appropriate consultation procedures.

194. According to city representatives, the government does not deal with the "*matryoshka*" problem, that is to say the superimposition of territorial structures belonging to the same administrative tier, thus creating a kind of territorial enclave – a problem that does not only arise in Kyiv, where, for example, the Koncha-Zaspa neighbourhood is entirely integrated into Kyiv even though it theoretically enjoys the same degree of local self-government as the capital. The rapporteurs believe that the territorial reform envisaged must comply with the principle of territorial and jurisdictional unity in order to resolve this type of problem.

195. Kyiv's total budget amounts to USD 2.3 billion (2012), 500 million of which is devoted to the development of the city and 1 billion of which originates from state subsidies. In the next few years, USD 15 billion will be allocated to investment projects relating to the 2025 Kyiv Strategic Plan. City representatives said that Kyiv had had to pay back to the state part (approx. USD 1 billion) of the personal income tax revenue received. The head of the Kyiv state administration pointed out that the Budget Code contained the elements necessary to balance the distribution of resources between the different tiers of government.

196. As far as the election of the mayor of Kyiv is concerned, the rapporteurs noted a rather unusual situation: the mayor of Kyiv, who was elected for four years in 2008, resigned on 2 June 2012, one day before the end of his term of office. Since then, the city has not had a mayor and his functions have been carried out by the city's secretary-general and the head of the state administration of the Kyiv *oblast*. On 19 July 2012, the secretary-general called on the *Verkhovna Rada* to set a date for the early election of the mayor but it did not take a decision before the parliamentary elections. Nothing has been done since the election of the new parliament in October 2012. The parliament's committee on state structure and local government recently recommended to the parliament to set the election of the mayor for 2 June 2013.

197. According to Article 85(30) of the Constitution, it is the responsibility of the *Verkhovna Rada* to determine the dates of ordinary and extraordinary elections to local government bodies.<sup>79</sup> Since the law requires that the successor of a mayor who has resigned be elected within 60 days of the resignation, the election should have taken place in 2012, but the *Verkhovna Rada* has still not set the date for this. According to information provided by the President of the Constitutional Court, 48 members of the *Verkhovna Rada* have brought the matter before the Court (citing Articles 136 and 141 of the Constitution and Article 14 of the Law on Elections), their application having been registered on 19 March 2013. The MPs asked the Court for a general interpretation – without limiting itself to the case of Kyiv – of the scope of the provisions cited, stating that the election of the mayor of Kyiv was just one example.

198. In its judgment of 29 May 2013, the Court ruled that the next elections of the mayor and municipal council of Kyiv were to be held on 25 October 2015, i.e. on the same date as the general local elections in Ukraine. This decision was the subject of a debate between the political groups on the need to fill the position of mayor in Kyiv and on the role of the Constitutional Court. However, the decision of the Court does not mention either the holding of early elections for the mayor or raise the issue of holding elections for the city council once their terms expire. This contradicts the Constitution which limits their term of authority to 5 years. Holding elections in 2015 would mean that Kyiv city council will have been exercising its authority for 7 years, in violation of the Constitution.

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<sup>79</sup> Verkhovna Rada of Ukraine, Law no. 2487-VI of 10.07.2010. The procedures for local elections are governed by Part II, section 14 of the Law of 10 July 2010 on the election of members of the Verkhovna Rada of the Autonomous Republic of Crimea and of members of town, village and settlement councils.

199. Leaving aside the Constitutional Court's judgment, the rapporteurs wish to underline the gravity of the situation: the position of mayor of the capital of Ukraine has been vacant for over a year and these duties will be performed on an interim basis for more than two years, until October 2015. This situation could damage the citizen's/voter's perception of local self-government and make it more complicated to carry out the mayor's responsibilities with regard to the implementation of the city's political strategy, the organisation of the work of the municipal council and the discharge of official duties.

200. This dysfunctional situation is all the more regrettable as the distribution of functions between the mayor of Kyiv and the head of the state administration continues to call for sensitive work and constant vigilance on the part of the mayor in order to guarantee a lasting balance. Moreover, the date of the ordinary elections to the council (whose term of office expires in June 2013) has now also been set by the Constitutional Court for 25 October 2015, with the result that the present council's term of office will have been considerably extended if early elections are not decided by the Parliament.

201. The Council of Europe closely examined the situation in Kyiv in an evaluation report in 2009<sup>80</sup> and in a political opinion dated 20 February 2013. The latter stressed that the situation raises practical and legislative issues and invite the authorities to "act as soon as possible and organise elections for the Mayor of Kyiv, as well as adopt new revised legislation on Kyiv and on local elections".<sup>81</sup>

## **7. State of progress of the reform of local and regional government in Ukraine**

### **7.1 The reforms underway: background and objectives**

202. Since Ukraine's independence, several plans to reform local government have been drawn up, including draft laws on administrative organisation, the structures of the state administration and local self-government.<sup>82</sup> The latest reform is currently being prepared and a constitutional assembly has been working on the legislative aspects since 2012. The government has submitted draft proposals to revise the Constitution to the parliament so as to be able to launch the legislative component of the reform.

203. Article 85(1) of the Constitution assigns the *Verkhovna Rada* the task of introducing amendments to the Constitution, which require a two-thirds majority for adoption (Article 155). No referendum is necessary to amend titles IX, X and XI of the Constitution (local affairs). Pursuant to Article 159, an opinion of the Constitutional Court is required on the compliance of the draft amendments with Articles 157 and 158.

204. The representatives of the presidential administration made a number of observations to the rapporteurs on the constitutional assembly's work objectives and emphasised that a range of factors were currently limiting the scope of local self-government:

- the absence of a stable economic basis for the local authorities;
- a complex structure of local finances ill-adapted to the needs of self-government;
- the absence of a clear dividing line between state institutions and local authorities.

205. On the basis of these findings, a reform programme with the following objectives has been drawn up:

- the deconcentration of the central administration and the transfer of powers to the local authorities;
- the strengthening of the local authorities' organisational, legal, financial and economic autonomy with the aim of improving citizens' access to necessary social services and guaranteeing the quality of these services throughout the country;

<sup>80</sup> Report DPA/LEX 7/2009, "Appraisal of the draft law on the Capital City of Ukraine, the Hero City of Kiev", 3 November 2009.

<sup>81</sup> [http://www.slg-coe.org.ua/wp-content/uploads/2013/04/CoE-Policy-Advice-on-the-Status-of-the-Capital-of-Ukraine-%E2%80%93-the-Hero-City-Kyiv\\_20131.pdf](http://www.slg-coe.org.ua/wp-content/uploads/2013/04/CoE-Policy-Advice-on-the-Status-of-the-Capital-of-Ukraine-%E2%80%93-the-Hero-City-Kyiv_20131.pdf)

<sup>82</sup> See the Congress report on the situation of local and regional democracy in Ukraine, <https://wcd.coe.int/ViewDoc.jsp?id=822813&Site=COE>, and the 2010 report of the Steering Committee on Local and Regional Democracy (CDLR) and the Venice Commission's report CDL(2005)029, entitled "Draft National Strategy on the Reform of the Territorial Organisation System of the Authorities In Ukraine".

- the creation of self-governing local authorities with the necessary powers and material and financial resources and capable of organising local democratic participation, including on the issues of mergers of local authorities and intermunicipal consortia;
- increasing the efficiency of inter-budget relations;
- the adoption of a sensitive approach to the specific problems of rural areas;
- the reform of the country's administrative and territorial structures.

## **7.2 Instruments and working methods**

206. As far as the structures and instruments of the local self-government reform process are concerned, the President of Ukraine signed on 17 May 2012 Decree no. 328/212 setting up a "Constitutional Assembly" as a "special subsidiary body serving under the authority of the President of Ukraine". The members of this 100-strong assembly are representatives of the political parties and civil society, scientists and international experts of the Venice Commission. Its terms of reference have been established as follows: "To draw up proposals for changes to the Constitution of Ukraine on the basis of the general practical application of the Basic Law of Ukraine by taking account of the forms and development of modern constitutionalism".

207. The assembly accordingly has an extended advisory function, which gives it the right to draw up proposals for constitutional amendments, which are then submitted to the *Verkhovna Rada* for decision. It has to set up a commission for "the division of the territorial administration and local authorities". Financial, logistical and technical support is provided by the departments of the presidential administration and scientific assistance by the National Institute for Strategic Studies. Representatives of the opposition parties do not participate in the assembly although they have been invited to do so.

208. The "Amending Motion on Chapter XI - Local Autonomy – of the Constitution of Ukraine" discussed at the plenary session of the Constitutional Assembly on 21 June 2013, was prepared after consultation with associations of local authorities, the scientific community and the public. It presents an analysis of the gaps in the system of local government in Ukraine, defines the objectives of the proposed reform and proposes a number of ways to solve the problems identified. A tentative agreement was reached by the Constitutional Assembly on the content of the motion. The adoption of the final text is expected in November 2013.

209. Another instrument of co-ordination between the central and regional authorities is the Council of the Regions, which was set up by the President on 9 April 2010 and has as its purpose the improvement of relations and co-operation between the state administrations and the local authorities with the aim of:

- dealing with matters concerning the implementation of the state's regional policy;
- strengthening the model of local self-government;
- developing modules for reforming the administrative and territorial structures;
- removing the disparities between the regions;
- guaranteeing balanced social and economic development at the regional level;
- improving the regions' competitiveness and investor appeal.

210. The Council of the Regions is actively participating in the reform process, in particular through its information activities and dialogue with the stakeholders. The Association of the Regions supports the Council's work and values its role as an intermediary between the state and regional levels.

211. The decision of the Council of the Regions of 21 March 2013, endorsed by the President of Ukraine on 2 April 2013, concerns the state's policy towards the local authorities and contains a set of guidelines that the rapporteurs regard as positive for the reform procedure:

- informing the local authorities on the advantages of the draft reform;
- establishing a discussion and result-evaluation process in the context of the reform;
- issuing requests to the Cabinet, the Council of Ministers of the Autonomous Republic of Crimea and the state administration of Kyiv and Sevastopol to take into consideration the provisions of the Charter;
- presenting to the Verkhovna Rada a draft law on inter-municipal co-operation;
- examining the possibility of transferring a proportion of property taxes to the local authorities;

- reviewing the criteria governing the system of inter-budget relations;
- extending the accountability of local government staff with regard to meeting professional obligations.

212. The third group of co-ordination instruments includes the “economic reform committees” operating at the national and regional levels and in Crimea, set up by the President in 2010. These committees are gradually being transformed into strategic authorities with the aim of guiding the sectoral policies of the different branches of government.<sup>83</sup> The committee set up at the national level is chaired personally by President Yanukovich, who has thus taken responsibility for directing and co-ordinating all aspects of the reform process in Ukraine.

213. As far as the working method is concerned, the government has produced concrete plans, drawn up by a group of experts with the participation of the associations of local authorities. A key element of the reform process is a series of exchanges of views with citizens and local authority representatives. The information campaign on the aims and procedure of the reform places the emphasis more on the intensity than the speed of the information procedures. In April 2013, a political debate was launched in the regions to gather information and comments, especially on public assets and resources. After this information and discussion phase, the government plans will be translated into concrete texts.

214. The government is also setting up “pilot projects” to assess certain aspects of the reform. The Vinnitsa and Lviv *oblasts* have applied to carry out such a project. All territorial entities that have expressed their desire for reform and are willing to implement the various components of the project are eligible as partners for pilot projects.

### **7.3 The reform timetable**

215. As far as the reform timetable is concerned, the government has chosen a “gentle” approach, preferring to produce the “plans” in two stages in 2013/2014.<sup>84</sup> The first will consist in work to amend the chapters of the Constitution relating to local self-government, and the Constitutional Assembly has been asked to draft the basic amendment texts (presentation scheduled for the end of May 2013.)<sup>85</sup> The representatives of the presidential administration believe it is crucially important for the reform timetable to be detached from the possible dates of presidential or local elections, but the rapporteurs heard conflicting opinions on this subject. For the representatives of the opposition parties, the date of the presidential election appears to be a key element for finalising the reform timetable.

216. As indicated above (see para. 207), the process of drafting a new chapter XI to the Constitution of Ukraine foresees a thorough discussion of the “Amending Motion on Chapter XI of the Constitution” by the Constitutional Assembly and a final decision by the latter in November 2013.

217. With regard to inter-municipal mergers, state decision-makers envisage a reduction in the number of local entities from 12,000 to 1,500 or 2000. Recognising that there is a real desire to merge, the state wishes to provide the financial resources to encourage such unions. Support for the reform is already guaranteed (for example by Sweden and Switzerland) in connection with certain programmes of international organisations. Moreover, the state will provide practical assistance to offset the impacts of mergers, especially in the local services sector. In 2013–2014, the government hopes to be able to present to the parliament a draft law on voluntary mergers of local authorities, which will also contain some provisions on encouraging such a process.

218. It is planned to introduce a draft law on the distribution of functions between the national administrative entities and the local authorities at a later stage.

### **7.4 Regional reforms**

219. With regard to regional reforms, the main objectives are to improve the revenues of regional entities by intensifying economic activities in the regions while at the same time taking account of the imbalance in economic performance between the various regions (some contribute to the system of inter-budget transfers while others benefit from these transfers).

<sup>83</sup> [real-politics.org/wp-content/.../04/reforms-report-ALL-13-04.doc](http://real-politics.org/wp-content/.../04/reforms-report-ALL-13-04.doc)

<sup>84</sup> [http://www.ukrinform.ua/eng/news/draft\\_concept\\_of\\_local\\_government\\_reform\\_will\\_be\\_ready\\_by\\_2015\\_301971](http://www.ukrinform.ua/eng/news/draft_concept_of_local_government_reform_will_be_ready_by_2015_301971)

<sup>85</sup> [http://www.ukrinform.ua/eng/news/kravchuk\\_vows\\_to\\_present\\_new\\_draft\\_constitution\\_in\\_late\\_may\\_302487](http://www.ukrinform.ua/eng/news/kravchuk_vows_to_present_new_draft_constitution_in_late_may_302487)

220. The Association of Districts and Regions highlighted the following priorities:

- the harmonisation of legal provisions, especially with a view to bringing national provisions into line with those of the EU and to ensuring compliance with the Charter;
- the abolition of the separation of administrative functions between the state and the regional authorities;
- increasing the status of the Council of the Regions (which comprises the chief executives of the regions and sits four times a year);
- simplifying the structures of the “*matryoshka towns*” (about 88 very complex associations of local authorities that suffer from considerable management difficulties) and, more generally, towns that have a particular status at the level of the district and region.

221. The structure of the regional institutions was extensively modified in 1997. Before that, the chair of the council was at the same time the head of the regional administration, but since then the state has separated these two functions and now appoints an official to head the regional state administration. Regional politicians have thus lost influence and political importance. The role of the councils is basically restricted to giving their agreement to specialised planning projects and, subsequently, receiving reports from the various sectors of the state administration.

222. Apparently, there is at the level of the regions a political will in support of reform. The council of the Ivano-Frankivsk region has tasked a working group with producing a “vision for the *oblast*”. This working group has identified the citizens’ priorities: 74% said they were in favour of merging the posts of political representative of the *oblast* with that of head of the regional administration, and many hope that a better distribution of powers and greater transparency with regard to the regional authorities’ activities will contribute to increasing the political accountability of their elected representatives.

223. As far as the new distribution of administrative functions at the level of the districts and regions is concerned, the President stressed as early as 11 May 2010 that “the creation of executive bodies of the regions will put an end to the problem of the dual exercise of power at the regional level”, emphasising at the same time the need to intensify the monitoring of the activities of the districts and regions, perhaps by carrying out monthly checks. The Minister of Regional Development stressed that in a second phase the reform could set out to create an “executive committee at the level of the *oblasts* and *raions* to take over from today’s bodies of state administration. The role of these bodies would be limited to checking the legitimacy of the actions of the new executive committees”.

## 8. CONCLUSIONS

224. The rapporteurs note that the full implementation of the Charter in Ukraine requires an improvement of the constitutional and legislative norms. In this context, they consider the establishment of the Constitutional Assembly as a positive development.

225. The rapporteurs have identified a number of legislative issues in relation to three provisions of the Charter, namely Article 3 in that the local authorities’ ability to take decisions and manage their own affairs is limited to “matters of local importance” and that it is the national authorities who determine what may or may not be considered as such, Article 4 in that local authorities cannot fully exercise their initiatives which remains within their fields of competence, and Article 9 as regards the restrictions set by the system of inter-budget relations that limit the financial autonomy of local authorities and their budget management. The rapporteurs consider that a revision of the law in this connection as well as an in-depth reform of the income distribution system and of Ukraine’s budget structures, inter-budget relations and cash resources are needed in order to enable the local authorities to manage a substantial share of public affairs.

226. In practice, the system remains highly centralised (80% of the revenues depend on the allocations from the state budget). At the level of the districts and regions, the central government has a strong presence in the person of the head of the administration. The concomitant funding of delegated functions remains insufficient, and the equalisation formula, which is considered satisfactory, needs to be improved and there are inequalities between the regions. The “towns of importance for the *oblast*” have a special status and are encountering budgetary difficulties as a result. The small towns are victims of hypercentralisation because the state is taking over their powers in



order to improve the economic conditions for exercising them. Several towns and cities, including the capital, are without a mayor for long periods as Parliament has not fixed elections dates owing to a gap in the electoral law. This legal gap on this particular point is consequently undermining the exercise of local democracy in the towns concerned.

227. The rapporteurs are convinced that the implementation of a reform of local self-government that would introduce a new system of relations concerning the budgets of different levels, of relations between the local entities and the state administration, and provide the local authorities with their own resources, is crucial in order to consolidate local and national democracy in Ukraine and improve the effectiveness of the reforms to follow.

228. In this context, the rapporteurs can only welcome the President's statements of 28 March and 6 June 2013 affirming that the reform of local self-government is one of the most urgent reforms that the country needs to carry out.

229. However, during their visits to Ukraine the rapporteurs became aware that the reform of local and regional self-government is today facing considerable political, economic, financial and legal challenges, which are inhibiting the process and could be an obstacle to the implementation of effective and democratic local and regional self-government that complies with the provisions of the Charter:

- The development of the country's "state-building" policy has for many years swung between centralisation and decentralisation, which makes it more difficult to seek a general consensus around a constitutional reform and a system that is coherent and stable at all levels of government;
- Lacking an absolute majority in the *Verkhovna Rada*, the Party of the Regions, which won a majority in the parliamentary elections of 28 October 2012, is seeking a stable majority to have laws passed (simple majority) or constitutional amendments adopted (two-thirds majority and, as the case may be, a referendum) – majorities necessary to carry out a far-reaching reform of local and regional self-government in Ukraine.
- The country's economic development is influenced by the necessity to convert an economy that strongly depends, on the one hand, on the effects of a Soviet-style planned economy and, on the other hand, on the state of the local public finances (including the cost of stabilising the Chernobyl nuclear power station). This situation is hampering the government's ability to finance the structural reforms at all levels of government.
- Although local and regional self-government is enshrined in the 1996 Constitution, there is a need to review the concept of local self-government and examine the consistency of its various elements on the basis of a revised Constitution.
- The reform process is making a slow progress despite strong statements from the central government, and the long periods scheduled for its completion (2015 for the first legislative component and an unspecified deadline to complete the "implementation" component) are a source of concern. In addition, a recentralising trend is perceptible in the draft laws which re-transfer local authority powers to the central government.

230. Given the difficulties involved in developing a reform of local self-government and in view of the urgency of such a reform, the rapporteurs encourage the Ukrainian decision-makers to do their utmost to implement all the reform proposals as quickly as possible, duly taking into consideration the historical, territorial, political and geographical conditions as well as the need to modernise the governance structures in Ukraine.

231. The rapporteurs welcome the fact that the "Amending Motion on Chapter XI of the Constitution of Ukraine" refers repeatedly to the Charter. The Ukrainian national delegation to the Congress has informed the rapporteurs that the motion seeks to implement the principles of the Charter in domestic law in order to create a solid constitutional basis anchoring effective local autonomy and oriented towards the needs of citizens. The rapporteurs strongly hope that the guidelines concerning the competences of local communities, their legal protection, the role and powers of their organs, their relations with State authorities and the new definition of the functions thereof, inter-municipal co-

operation as well as clarifications regarding local finance reform will produce a considerable reforming effect. It will be essential to implement the provisions of the new Chapter XI of the Constitution and constitutional measures derived from the Constitution very quickly.

232. Since a complete and thorough reform of local and regional self-government is now being considered by the President of Ukraine, the rapporteurs call on the state bodies responsible to take transitory measures in line with the proposed reform.

233. Aware that the success of a reform is dependent on the measures concerned being understood by the institutions and citizens for whom they are intended, the rapporteurs approve the efforts being made at the local and regional levels to explain the reform and permit as broad a debate as possible on them.

234. In view of the considerable delay in the reform project and in setting up the Constitutional Assembly, the rapporteurs fully share the opinion of the representatives of the associations of local authorities that the reform must be speeded up, independently of the local elections or the 2015 presidential election. If this is done, the reform timetable will be able to take account of these events, for example in order to take into consideration the term of office of the elected councils if the reform results in extending that period.

235. The rapporteurs point out that the reform at the regional level, including the districts, will be decisive for bringing about a coherent reform of the Ukrainian system of governance. The regions are a source of both the socioeconomic and cultural diversity of the country and its territories and provide considerable growth potential provided that the various obstacles to their development are removed. The rapporteurs believe that the reform must preserve a balance between financial equalisation (which requires an efficient system of vertical and horizontal adjustments) and interregional competitiveness. With the Council of the Regions, Ukraine possesses the right instrument for discussing, promoting and implementing the necessary ideas.

236. Rural development and combating the rural exodus are essential for many municipalities if they are to avoid demographic decline and maintain local economic vitality in the areas affected by rural depopulation and the void it leaves behind. The rapporteurs believe that the Ukrainian authorities, at all levels of governance, should pay particular attention to these issues, especially by developing specific strategies aimed at revitalising the periurban and rural areas exposed to this trend of demographic, economic and social decline, in order to boost employment and incomes. The local authorities in these geographical areas should be involved in the development of these strategies by the central government authorities.

237. The rapporteurs are convinced that transferring the state's administrative functions in the districts and regions to the elected bodies will be a key aspect of the reform. That transfer would open the way for significant regional development initiatives, make it possible to solve the problem of the unpredictability of decisions taken by the state administrations and both strengthen democracy at the regional level and increase budget accountability with regard to investments decided on by regional bodies. That approach would also make it necessary to review the distribution of powers between the regional entities.

238. The absence, as in the case in the capital Kyiv, of an elected mayor exercising his or her functions in a municipality is clearly impeding the proper functioning of local democracy and, consequently, creating a situation contrary to the Charter. The rapporteurs call for elections to be held without delay to resolve this situation in the towns and cities where it exists, especially in Kyiv and the adoption of the law which should clarify the respective powers of the mayor and the head of administration in Kyiv.

239. As far as interaction with international organisations and partners is concerned, the Council of Europe's Action Plan for Ukraine 2011-2014 entitled "A Partnership for Reform"<sup>86</sup>, with a budget of approximately 22 million euros and following on from other initiatives, is a major instrument for

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<sup>86</sup> [http://hub.coe.int/c/document\\_library/get\\_file?uuid=24875c00-6299-4c4f-9bd5-ad47a56d5f1e&groupId=10227](http://hub.coe.int/c/document_library/get_file?uuid=24875c00-6299-4c4f-9bd5-ad47a56d5f1e&groupId=10227); see also the "Declaration of Intent" of 14 February 2012 signed between the Directorate General of Democracy and the Ministry of Regional Development and the final report of the Centre of Expertise of the Council of Europe (28 June 2013: "On the implementation of the programme of the Council of Europe "Strengthening local democracy and support for the reform of local government in Ukraine", January 2010 - March 2013 (available in English only). Also note that the next phase of the Action Plan for 2014 - 2017 is in preparation.

supporting Ukraine's initiatives to achieve its objectives with regard to the development of its institutions and of the democratic procedures at the local and regional levels. The Congress is actively contributing to the action plan, which includes three programs for local democracy. The Congress will focus more specifically on activities intended to strengthen institutional capacities of local communities and to support elected representatives who are major players in local decision and policy making. Its action is complementary to that of the Centre of Expertise for Local Government Reform, which provides assistance to decentralisation and capacity building in the area of local governance. The rapporteurs invite the Ukrainian government to seize the opportunity provided by these assistance programs in the reform process. The rapporteurs also took note of the request for an opinion, addressed to the Venice Commission, to check the distribution of powers between the state governments and local authorities.

240. With regard to co-operation with foreign NGOs, the rapporteurs welcome the fact that these bodies have a long tradition in Ukraine.<sup>87</sup> Their work mainly focuses on projects that are being implemented at the local and regional levels and make a useful contribution to improving the work of the Ukrainian NGOs operating in the areas of "state-building" and regional development.<sup>88</sup>

241. Finally, the rapporteurs call on the government to consider ratifying the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), signed by Ukraine on 20 October 2011.

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<sup>87</sup> See for example "Prospects for Strengthening Regional Governance in Ukraine in the context of Initiated Reforms – Analytical Report, Regional Governance and Development (RGD) – Ukraine", Canadian Urban Institute, July 2005; and information on the 4th meeting of the steering committee of the joint EU/UNDP local development project, <http://www.cba.org.ua/en/about/about-cba>

<sup>88</sup> See Lyubov Palyvoda and Sophia Golota, "Civil Society Organizations in Ukraine. The State and Dynamics (2002-2010)", <http://uniter.org.ua/data/block/CSO2010eng.pdf>.

**Appendix I - Programme of the Congress monitoring visit in Ukraine (Part 1, 21-23 May 2012)**

**CONGRESS MONITORING VISIT TO UKRAINE  
Part I - 21 – 23 May 2012  
Programme<sup>89</sup>**

**Congress delegation:**

Rapporteurs:

Mr Fabio PELLEGRINI	Co-Rapporteur on local democracy Chamber of Local Authorities, SOC <sup>90</sup> Member of the Monitoring Committee of the Congress Municipal Councillor of Rapolano Terme (Italy)
Mr Pascal MANGIN	Co-Rapporteur on regional democracy Chamber of Regions, EPP/CD Member of the Monitoring Committee of the Congress Alsace Region Councillor (France)

Experts:

Mr Bernd SEMMELROGGEN	Consultant Member of the Group of Independent Experts of the Congress on the European Charter of Local Self-Government
Ms Dana KOROBKA	Local Expert (Russian Federation)

Congress Secretariat:

Ms Sedef CANKOÇAK	Co-Secretary of the Monitoring Committee
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<sup>89</sup> Part II will be carried out in 2013.

<sup>90</sup>EPP/CD: European People's Party – Christian Democrats of the Congress  
SOC: Socialist Group of the Congress

<b>Monday, 21 May 2012</b>
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## **Members of the Ukrainian delegation to the Congress**

### **Associations**

- National Association of local authorities  
Ukrainian Association of District and Regional Authorities  
Mr Sergiy CHERNOV, President of the Association, Chairman of Kharkiv Regional Council  
Mr Yuriy ANDRIYCHUK, Head of the Secretariat of the Association
- National Association of local authorities  
Association of Ukrainian Cities  
Mr Ivan KULICHENKO, President of the Association  
Mr Pavlo KOZYREV, Vice President, Head of small towns sections  
Mr Anatoly FEDORTCHUK, Vice President, Head of medium town section  
Mr Oleksandr LUKIANTCHENKO, Vice President, Head of big cities section  
Mr Viktor KRAVTCHENKO, Head of AUC Legal Assistance Center  
Mr Sergiy TATUSYAK.
- National Association of Village and Settlement Councils  
Mr Mikola I. FURSENKO, President of the Association  
V.Y. IVTCHENKO, Vice President, Head of the Executive Council of the Association  
I.V. MOSYUK, Member of the Association's Governing Board, Head of the regional office of Ivano-Frankivks
- State Foundation for Local Self-Government in Ukraine  
Mr Sergiy MALIKOV, President of the Foundation

### **City of Kyiv**

Mr Leonid CHERNOVETSKYI, Mayor of Kyiv  
Ms Galyna GEREGA, Deputy Mayor of Kyiv, Secretary of Kyiv City Council  
Mr Yuriy DMYTRUK, Deputy of Kyiv City Council  
Mr Bronislav STYCHYNSKY, Advisor to the Mayor of Kyiv  
Mr Oleksandr POPOV, Head of Kyiv City State Administration  
Mr Oleksandr MAZURCHAK, First Deputy Head of Kyiv City State Administration  
Mr Oleksandr PUZANOV, Deputy Head of Kyiv City State Administration, Chief of staff  
Ms Alla BABICH, Head of Legal Department of Kyiv City State Administration  
Mr Lleksey RUZMYLKO, Head of Department

### **Experts**

Mr Yuri HANUSHCHAK, member of GIE, Advisor of the Association of Ukrainian Cities  
Mr Ihor KOLIUSHKO, President of the Executive Board of the Center for Political and Legal Reforms (CPLR)  
Mr Anatoly TKACHUK, President of the Civil Society Institute (CSI),  
Mr Ihor KOHUT, Chairman of the Board, Agency for Legislative Initiatives (ALI)

**Tuesday, 22 May 2012**

**City of Simferopol**

Ms Olga Grigorievna SMOLIGOVETS, Secretary of the Simferopol Municipal Council  
Mr Segei Yurievich TKATCHEV, First Deputy Mayor responsible for the executive  
Ms Tatyia Olegovna SVIRIDENKO, Head of the Municipal Council's Legal Department  
Ms Tatiana Nikitichna KUCHTEYEVA, Director for Budget, Finances, and Economy  
Ms Natalya Fedorovna MALENKO, President of the Council of District "Kiev" of Simferopol  
Mr Oleg Arshavirovich GABRIELIAN, President of the Standing Committee of Culture, Tourism and Harmonisation of interethnic relations in Simferopol City Council, Rector of the University of Culture, Arts and Tourism of Crimea.

**Supreme Council (parliament) of the Autonomous Republic of Crimea (ARC)**

Mr Vladimir KONSTANTINOV, Chairman of the Supreme Council of the ARC, and Members of Parliament  
Mr Vladimir KLYCHNIKOV, Chairman of the Commission of the Supreme Council of the ARC for Relations with Organs of Local Self-Government in the ARC, and Members of the Commission  
Mr Konstantin BAKHAREV  
Mr Sergey DONICH, First Deputy

**Ministers of the Autonomous Republic of Crimea**

Mr Peter BURLAKOV, First Vice President of the Council of Ministers of the ARC  
Ms Svetlana VERBA, Minister for Economic Development and Trade of the ARC  
Mr Sergey BRAYKO, Minister for regional development and communal economy of ARC  
Mr Nikolay SKORIK, Minister of Finance of the ARC  
Mr Aleksandr LIEV, Minister of Resorts and Tourism of the ARC  
Mr Igor PRIMYSHEV, Head of the General Directorate for External Relations and Interregional Cooperation of the Council of Ministers

**Wednesday, 23 May 2012**

**City of Ivano-Frankivsk**

Mr Ruslan MARTSINKIV, Secretary of the Municipal Council

**City of Chernivtsi**

Mr Vitaliy MIKHAYLISHYN, Secretary of the City Council, and Members of City Council  
Mr Vladimir BESHLEY, Member of the Municipal Council, Chair of the Committee on Housing and Environment  
Mr Vladimir KED, Member of the Municipal Council, Chair of the Committee on Economy, Trade, and Tourism

**Region of Ivano-Frankivsk**

Mr Oleksandr SYCH, President of the Council of Ivano-Frankivsk region, and Members of the Council of Ivano-Frankivsk region and members of Village Councils,  
Mr Ostar DZES  
Mr Kazar KOSAREVYCH  
Mr Mihaylo VISHIVANIUK, Head of Administration of Ivano-Frankivsk region

**Presidential Head of the Administration**

Ms Maryna STAVNIYCHUK, Advisor to the President of Ukraine, Head of the Main Department of Constitutional and Legal Modernisation, Administration of the President of Ukraine, member of the Venice Commission  
Mr Yevghen ONOPRIYENKO, First Deputy Head of the Regional Policy Department  
Mr Sergiy MALIKOV, President of the State Foundation for Local Self-Government in Ukraine

**Appendix II - Programme of the Congress monitoring visit to Ukraine (Part 2 - 22-23 April 2013)**

**CONGRESS MONITORING VISIT TO UKRAINE  
Part II - 22 – 23 April 2013  
Programme<sup>91</sup>**

**Congress delegation:**

Rapporteurs:

Mr Marc COOLS	Co-Rapporteur on local democracy Chamber of Local Authorities, ILDG <sup>92</sup> Member of the Monitoring Committee of the Congress Alderman of Uccle, President of the Association of Cities and Municipalities of the Region of Brussels-Capital (Belgium)
Mr Pascal MANGIN	Co-Rapporteur on regional democracy Chamber of Regions, EPP/CCE Member of the Monitoring Committee of the Congress Alsace Region Councillor (France)

Expert:

Mr Bernd SEMMELROGGEN	Consultant Member of the Group of Independent Experts of the Congress on the European Charter of Local Self-Government
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Congress Secretariat:

Ms Sedef CANKOÇAK	Co-Secretary of the Monitoring Committee
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<sup>91</sup>Part I has been carried out in May 2012.

<sup>92</sup>EPP/CCE: European People's Party – Christian Democrats of the Congress  
ILDG: Independent and Liberal Democrat Group of the Congress

**Monday, 22 April 2013**

**Experts**

Mr Anatoly TKACHUK, Director of Science and Development, Institute of Civil Society,  
Mr Ihor KOHUT, Head of the Board, Laboratory of Legal Initiatives,  
Mr Yuriy GANUSHCHAK, former MP, expert of the Council of Europe  
Ms Olga SHEVCHUK, Administrative Assistant, Council of Europe Programme "Strengthening Local Democracy and Support for Local Government Reforms in Ukraine"

**Committee on State Building and Local Self Government**

Mr Yevhen KARTASHOV, Member of the Committee  
Ms Angela MALYUGA, Head of the Committee Secretariat

**Members of international organisations working on local government issues**

Ms Mirja PETERSON, Country Director of the Swedish International Development Cooperation Agency (SIDA) in Ukraine  
Ms Petra WIDMER, Representative of Mr BELTRANI, Director of the Swiss Agency for Development and Cooperation (SDC) in Ukraine  
Ms Elena PANOVA, Deputy Head of the United Nations Development Programme (UNDP) in Ukraine  
Mr José Roman LEON LORA, Head of Operations Section 2 "Sustainable development: economic / trade and territorial", European Union Delegation in Ukraine  
Ms Olena LYTVYENKO, a.i. Deputy Head of the Council of Europe Office in Ukraine

**Ministry for Regional Development, Building and Housing**

Mr Gennadiy TEMNYK, Minister of Regional Development, Construction and Municipal Economy of Ukraine  
Mr Oleg KHUSNUTDINOV, Head of Department for International Cooperation  
Ms Nadiia BONDARCHUK, Director for Regional Development and Project Management  
Mr Sergii SHARSHOV, Deputy Director for Regional Development and Project Management – Head of Division for Regional Development  
Ms Inga VOYTSEKHOVSKA, Head of Division for Multilateral Cooperation and European Integration of the Department for International Cooperation  
Ms Natalia KOFANOVA, Head of Division for Regulatory and Methodological Support of Local Government of the Directorate for Regional Development and Project Management  
Ms Iryna KYRYCHENKO, Chief Specialist of Division for Multilateral Cooperation and European Integration of the Department for International Cooperation

**Ombudsman of the Parliament**

Ms Valeriya LUTKOVSKA, Ukrainian Parliament Commissioner for Human Rights (Ombudsman)

**Accounting Chamber of Ukraine**

Mr Roman MAGUTA, President  
Mr Myhailo TOLSTANOV, Deputy Head of the International Co-operation Department  
Mr Dmitro KARNAKOV

**Representative of Mr Vitaliy KLITSCHKO, Member of Parliament (UDAR)**

Ms Nataliya NOVAK, People's Deputy



**Tuesday, 23 April 2013**

**Ministry of Finance**

Mr Sergiy RYBAK, Deputy Minister

Ms Galyna MARKOVIC, Deputy Director of the Department of local budget

Ms Olena TEPLA, Department for Debt Management

**Kyiv City Council**

Mr Yuriy BONDAR, Councillor, Kyiv City Council, Head of the Steering Commission on housing and communal economy and energy system

Mr Vitaliy PAVLYK, Councillor, Kyiv City Council, Head of the Steering Commission on rule of law, regulations and ethics

**Presidential Head of the Administration**

Mr Sergiy LARIN, Deputy Head of the Administration

Ms Marina STAVNIYCHUK, Advisor to the President

Mr Sergiy MALIKOV, President of the State Foundation for Local Self-Government in Ukraine

Mr Andriy YERMOLAIEV, Director of the National Institute of Strategic Studies

**Constitutional Court of Ukraine**

Mr Anatolii HOLOVIN, President

Ms Olga KRAVTCHENKO

**Mrs Natalia ROMANOVA**, President of the Chamber of Regions, Congress of Regional and Local Authorities of the Council of Europe

**Associations of local and regional authorities**

➤ Ukrainian Association of District and Regional Authorities

Mr Sergiy CHERNOV, President of the Association, Chairman of Kharkiv Regional Council

➤ Association of Ukrainian Cities

Mr Yuriy VILKUL, President of the Association

➤ National Association of Village and Settlement Councils

Mr Mikola FURSENKO, President of the Association

## Appendix III - Population income in regions of Ukraine

## Population income in regions of Ukraine\*

	Disposable income per capita, UAH									
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>Ukraine</b>	2938.0	3400.3	4468.4	6332.1	7771.0	10126.0	13716.3	14372.8	18485.6	21249.5
Autonomous Republic of Crimea	2422.3	2974.0	3838.6	5432.9	6567.0	8589.7	11515.8	12036.3	15480.0	17612.2
<b>oblasts</b>										
Vinnitsia	2707.2	3211.4	4059.7	5791.1	6980.5	8963.3	11676.4	12191.7	16018.0	18679.9
Volhynie	2594.0	2974.1	3729.5	5254.2	6387.6	8022.6	10597.3	10966.8	14311.9	16390.8
Dnipropetrovsk	3165.7	3701.7	4907.3	7015.9	8632.3	11439.0	15459.9	16386.5	20739.4	23724.0
Donetsk	3091.4	3637.6	4984.0	7088.9	8855.9	11625.7	16220.1	17014.0	21317.3	24622.8
Jitomir	2541.6	3040.5	3985.2	5568.5	6754.3	8864.5	12022.6	12179.8	15775.9	18428.8
Transcarpathie	2072.0	2678.6	3444.6	4821.2	5757.7	7323.8	9664.5	9764.5	12699.6	14662.9
Zaporijia	3165.0	3769.7	4994.4	7074.5	8693.6	11276.2	15265.2	15652.6	20221.4	23142.8
Ivano-Frankivsk	2349.1	2941.3	3780.2	5321.6	6463.4	8336.0	11262.8	11692.4	15009.4	17238.4
Kiev	3114.6	3521.7	4426.8	6305.0	7953.8	10248.8	14292.4	15024.9	19513.9	22408.4
Kirovograd	2576.6	3050.0	3885.5	5568.6	6672.0	8564.6	11489.3	11727.3	15417.7	17712.2
Louhansk	2615.1	3150.6	4139.0	5900.9	7343.4	9620.0	13411.0	14071.6	17850.0	20589.0
Lviv	2741.8	3401.6	4396.1	6203.1	7394.7	9523.8	12718.3	13211.3	16513.8	19240.2
Mikolaïv	2771.2	3385.3	4354.7	6137.5	7318.4	9376.5	12626.5	13154.2	16993.4	19637.5
Odessa	2472.8	3163.9	4221.4	5883.4	7006.1	8780.8	11754.4	12404.2	16275.2	18878.4
Poltava	3048.1	3560.1	4683.5	6653.5	8064.2	10382.3	13922.0	14742.6	17990.9	20485.0
Rivne	2560.1	2984.8	3787.9	5344.4	6540.6	8285.6	11124.6	11316.8	14629.8	17040.1
Soumy	2686.3	3276.7	4141.1	5972.0	7459.2	9876.3	13187.2	13426.4	16875.5	19101.0
Terнопil	2158.1	2794.6	3524.2	5032.7	6283.4	8063.5	10583.0	10634.2	13824.2	16011.3
Kharkiv	2929.1	3468.9	4489.6	6355.7	7819.6	10328.5	14065.7	14633.1	18450.5	21421.1
Kherson	2399.6	2832.3	3792.0	5400.5	6492.2	8374.5	11248.1	11440.3	14881.7	17210.4
Khmelnyskyï	2640.3	3075.3	4024.1	5733.3	6943.1	8965.3	11938.6	12238.2	15781.0	18386.1
Tcherkassy	2481.9	2961.9	3883.4	5534.0	6795.5	8782.7	11987.2	12517.5	15769.2	17798.3
Tchernivtsi	2028.6	2741.9	3607.9	5078.0	6078.0	7738.0	9793.2	10013.3	13503.3	15634.4
Tchernihiv	2769.2	3256.6	4228.7	5979.1	7201.3	9337.4	12353.4	13155.5	16625.0	18714.1
City of Kiyv	4257.4	5541.8	7623.9	10683.3	13566.9	18233.2	24960.2	27474.5	37012.7	41816.7
Sébastopol agglomeration	2399.2	3149.8	4177.0	5723.3	6790.6	9093.1	12111.6	12566.4	17078.3	19566.9

\*Source: State Statistics Service of Ukraine (UAH min) 3.5.2012

[http://ukrstat.org/en/operativ/operativ2008/gdn/dvn\\_ric/dvn\\_ric\\_e/dn\\_reg2008\\_e.html](http://ukrstat.org/en/operativ/operativ2008/gdn/dvn_ric/dvn_ric_e/dn_reg2008_e.html)

## Appendix IV - Administrative units, as of 1 January 2013

## Administrative units, as of 1 January 2013\*

	Districts	Cities	of which cities govern with special status, republican and regional importance	Districts within city	Rural settlements of urban type	Rural districts	Rural settlements
<b>Ukraine</b>	<b>490</b>	<b>460</b>	<b>180</b>	<b>111</b>	<b>885</b>	<b>10,279</b>	<b>28,441</b>
Autonomous Republic of Crimea	14	16	11	3	56	243	948
<b>oblasts</b>							
Vinnitsya	27	18	6	-	29	661	1,461
Volyn	16	11	4	-	22	379	1,054
Dnipropetrovsk	22	20	13	18	46	288	1,435
Donetsk	18	52	28	21	131	253	1,118
Zhytomyr	23	12	5	2	43	579	1613
Zakarpattya	13	11	5	-	19	307	579
Zaporizhya	20	14	5	7	22	263	915
Ivano-Frankivsk	14	15	5	-	24	477	765
Kyiv	25	26	13	-	30	605	1,126
Kirovohrad	21	12	4	2	27	376	995
Luhansk	18	37	14	4	109	206	781
Lviv	20	44	9	6	34	633	1,850
Mykolayiv	19	9	5	4	17	287	894
Odesa	26	19	7	4	33	439	1,125
Poltava	25	15	5	5	21	467	1,810
Rivne	16	11	4	-	16	338	1,000
Sumy	18	15	7	2	20	384	1,466
Ternopil	17	18	1	-	17	580	1,023
Kharkiv	27	17	7	9	61	381	1,679
Kherson	18	9	3	3	31	259	658
Khmelnyskiy	20	13	6	-	24	568	1,414
Cherkasy	20	16	6	2	15	525	824
Chernivtsi	11	11	2	3	8	252	398
Chernihiv	22	16	3	2	29	525	1,481
City of Kyiv	-	1	1	10	-	-	-
Sevastopol agglomeration	-	2	1	4	1	4	29

\*Source: official web-site of Verkhovna Rada of Ukraine  
[http://ukrstat.org/en/operativ/operativ2013/ds/ator/ator2013\\_e.htm](http://ukrstat.org/en/operativ/operativ2013/ds/ator/ator2013_e.htm)