

CENTRE OF EXPERTISE FOR MULTILEVEL GOVERNANCE

EXPERT ANALYSIS

of the draft Law on Local Self-Government and relevant provisions of the draft Constitution

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The views expressed herein do not necessarily reflect the official position of the Congress of Local and Regional Authorities of the Council of Europe.

Summary

The present expert analysis assesses the Draft Law of the Republic of Belarus on Local Self-Government and the relevant provisions of the Draft Constitution against the standards of the European Charter of Local Self-Government (ETS No. 122),¹ considering the guidance of the Contemporary Commentary by the Congress of Local and Regional Authorities of the Council of Europe (hereinafter, the Congress) on the explanatory report to the Charter.²

It is evident that both texts signify a substantial progression in the establishment of a democratic, decentralised governance system for a prospective democratic Belarus. The draft Constitution expressly recognises and guarantees local self-government as one of the foundations of the constitutional order, while the draft Law on Local Self-Government provides an initial statutory framework for the organisation and functioning of local authorities.

The overall design is broadly compatible in structure with European principles, as evidenced by the introduction of two tiers of self-government (*hramadas* and *pawets*), the presence of elective and executive bodies, and the establishment of financial bases. Nevertheless, there are several deficiencies that persist, including the absence of clarity regarding competences, inadequate fiscal autonomy, insufficient consultation mechanisms, inadequate procedural safeguards in administrative supervision, and an absence of sufficient guarantees for elected representatives and staff.

The analysis concludes that, while the drafts constitute a promising foundation, they require substantial refinement to ensure effective autonomy, adequate resources, sound procedures, and democratic accountability in line with the Charter.

I. Introduction

1. The preparation of the draft Law on Local Self-Government and the relevant provisions of the draft Constitution for a new democratic Belarus are necessary and important steps on the path to democratic transition and the establishment of a system of local self-government that will be an integral part of multilevel governance in Belarus, as well as a fundamental tool for the country's integration into the European family.
2. This analysis will examine the most important provisions of the draft law and the relevant provisions of the draft Constitution from the perspective of the fundamental international convention on local democracy in Europe, i.e. the European Charter of Local Self-Government (hereinafter, the Charter) also taking into account the guidance on the interpretation and application of the Charter provided by the Contemporary Commentary by the Congress on the explanatory report to the Charter, produced in 2020.
3. The Charter is the only (unique at the global level) international treaty that serves as a reference text for local democracy in Europe and has been ratified by all 46 member states of

¹ Available in English (<https://rm.coe.int/1680b0fbec>) and Belarusian (<https://rm.coe.int/1680b58bc3>).

² Available in English (<https://rm.coe.int/1680a06149>) and Belarusian (<https://rm.coe.int/4880262db8>).

the Council of Europe. It also serves as a benchmark for one of the basic requirements set out in the Copenhagen criteria for candidate countries to proceed with the accession process to the European Union.

4. In the following sections, this analysis will examine and evaluate, on the basis of the Charter, the Contemporary Commentary, and the relevant soft law of the Council of Europe (recommendations, resolutions, etc.), the draft Law of the Republic of Belarus on Local Self-Governance and the relevant provisions of the Constitution.

5. In the context of this evaluation, the positive points and advantages of the provisions under consideration will be highlighted, while any negative points, disadvantages, and shortcomings will be particularly emphasised. The analysis will also include proposals for changes that are deemed to improve the harmonisation of the draft law and the relevant constitutional provisions with the Charter and other European and international standards and guidelines.

II. Assessment by Charter principles and provisions

6. The draft Constitution incorporates a special Chapter (8) on Local Self-Government (Articles 108-118), while it also provides (Article 164 on 'Previous Legislation', paragraph 3) that *"The Soim [parliament] shall adopt the laws to be enacted on the occasion of the entry into force of this Constitution within the following terms, as from the date of entry into force of this Constitution: [...] fundamentals of local self-government - 2 years"*. The draft Law on Local Self-Government includes 70 articles organised in 11 Chapters.

7. As stated in its preamble and in Article 1, the Charter is a binding document: as an international treaty, it has legal force and should be implemented faithfully by the Parties. This means that all domestic sources of law, including the constitution, must take the Charter into account. Therefore, the Charter should not only be a judicially enforceable legal instrument (Article 11) but also a guide for the legislature and possibly for amending the constitution.³ In the following sub-sections, an attempt is made to measure the alignment of the Constitution and especially of the draft Law on Local Self-Government with each article of the Charter and with the principles and provisions contained therein.

Article 2: Constitutional and legal foundation for local self-government

8. This article has a foundational and symbolic value that goes beyond its legal force, and it is one of the few provisions that cannot be the subject of a reservation (Article 12 of the Charter). It requires the principle of local self-government to be expressly recognised in written law, and this is a recognition of practical importance, since Article 11 provides that *"the*

³ Congress of Local and Regional Authorities (2020), A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, retrieved from: <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>

principles of local self-government as are enshrined in the constitution or domestic legislation” shall be protected by judicial remedies that local authorities can invoke.

9. The notion of “local self-government” represents the very core of the Charter. It is a multifaceted concept, consisting of all the aspects covered by the Charter. Therefore, to assess compliance with Article 2, it would be necessary to check not only the formal recognition of the principle of local self-government in domestic legislation, but also whether those core elements are enshrined therein.

10. The current version of the draft Constitution incorporates the principle of local self-government as part of the checks and balances system of the Republic, while it also contains an explicit recognition and guarantee of local self-government (Article 3.1, 3.2). In addition, it stresses that local self-government bodies are not integrated into the system of state government bodies, clarifying that local governments are not subject to state hierarchy, and ostensibly implying the institutional autonomy of local self-government.

Article 3. Separation of powers

[...]

2. In the Republic of Belarus, local self-government is recognised and guaranteed; its competencies include issues of local importance. Local self-government bodies are not part of the system of the state government bodies.
3. The legislative, executive, and judicial power bodies, as well as local governments, within the competence of their authority, are independent; they check and balance each other; their activities are open, and they are accountable to the citizens.

11. Other references to local self-government are found in several provisions of the draft Constitution. It should be noted that some of them make clear that, similarly to the state executive power, local government are also bound by basic principles of the Republic (Article 5) and human rights. The draft Constitution also highlights the priority of ratified international treaties and their priority over the laws (Article 5.6), while at the same time prohibiting to conclude treaties which “*do not comply with the Constitution*” (Article 5.7):

Article. 5 Rule of Law (also applies to local self-governments)

1. The rule of law is recognised and observed in the Republic of Belarus.
2. The Constitution has supreme legal force and direct effect.
3. The state bodies and local self-governments, officials [...] act within the framework of the Constitution and the laws and regulations adopted in accordance with it.
4. [...]
5. The Republic of Belarus complies with its obligations in international law and ensures compliance of the legislation with them.
6. International treaties ratified by the Republic of Belarus have priority over the laws and are part of the national legislation.
7. The Republic of Belarus is not allowed to conclude international treaties which do not comply with the Constitution.
8. [...]

Article 18. Right to effective means of legal protection

1. Everyone has the right, in the manner prescribed by the Constitution and the law, to appeal in court against an action (inaction) of a state authority, local government body, or an official, who infringes upon the person’s rights and freedoms.

Article 19. Right to legal assistance

1. Every person has the right to legal assistance for the exercise and protection of rights and freedoms [...]; the right to defend him/herself personally or to use at any time the assistance of lawyers and his/her other representatives in court, with other state bodies, local self-government bodies, in institutions [...], and in relations with officials.

12. Article 3 ('Main Principles of Local Self-Government') of the draft law characterises local self-government as *"one of the foundations of the constitutional system of the Republic"* which *"is recognised and guaranteed throughout the entire territory of the Republic"* (principle of ubiquity) and is implemented based on eleven principles among which are included: *"people's sovereignty; rule of law; subsidiarity; transparency and consideration of public opinion; [...] electability; legal, organisational, material and financial independence within the powers defined by law; accountability and responsibility to the territorial community; [...] judicial protection of local self-government rights."*

13. Article 1 of the draft law includes legally binding definitions of 17 terms used in its text (e.g. "delegated competence", "intercommunal co-operation", "local self-government",⁴ "district administration" etc.) to achieve legal clarity and promote a common understanding that can facilitate the operation of local self-government. It is important that local self-government is defined as *"the right and ability of local communities to independently resolve issues of local significance and under their own responsibility, based on the interests of the population"* (Article 1). This is a definition that fully reflects the concept of the Charter (see below the sub-section "Article 3: Concept of Local Self-Government").

14. In Article 7 of the draft law ('Organizational and Legal Basis for Local Self-Government'), it is provided (paragraph 1) that *"Local self-government bodies are legal entities, have their own powers, within the scope of which act independently and bear responsibility for their activities in accordance with the law."* These provisions also align with Article 2 of the Charter

15. Article 5 of the draft law outlines the system and defines the forms of local self-government. It provides (Article 5.1) that the system of local self-government consists of two territorial levels, namely the basic (local: *Hramada*), and the regional (*Pawet*). The *hramada* can be a rural, rural-urban or urban community and has its own representative and executive bodies. At the second tier, the *pawet* is conceptualised as a territorial association of rural, rural-urban and urban *hramadas* that represents their common interests and has its own representative and executive bodies. It is a scheme that resembles the German *kreis*, which is also conceptualised as a territorial association (*Gemeindeverband*) of municipalities (*Gemeinden*)

Article 3: Concept of local self-government

16. This Article clarifies the essence of the overall concept of local self-government in the Charter, underlining the free political mandate (in combination with Article 7) of elected local authorities to conduct local affairs under their own discretion and responsibility for the benefit

⁴ "Local Self-Government: the right and ability of local communities to independently resolve issues of local significance, within the framework of the law and under their own responsibility, based on the interests of the population, taking into account nationwide needs, and historical and cultural traditions."

of the local population to which they are accountable. Article 3.1 of the Charter refers not only to a right but also to the factual ability to exercise it. In other words, the right to regulate (also through local ordinances and by-laws) and manage a substantial share of public affairs must be ensured by the provision of the necessary means to exercise this right effectively. The insertion of the phrase “within the limits of the law” acknowledges the potential for legislation to define this right and ability more precisely.

17. The second paragraph of this Article provides, in accordance with the importance attached by the Council of Europe to good democratic governance, that the rights of self-government must be exercised by democratically constituted authorities. This right typically encompasses a representative assembly, without or with executive bodies accountable to the assembly, and also allows for the possibility of direct democracy, where this is stipulated by law.

18. At this point, it should be noted that the draft Constitution provides relevant guarantees and incorporates extensive provisions on local elections and citizen participation at the local level:

Article 32. Right to participate in the administration of social and state affairs

1. Citizens have the right to participate in [...] the affairs of local self-government through their democratically elected representatives, as well as directly, in cases stipulated by the Constitution and the law.
2. Direct participation of citizens in [...] local self-government is ensured by holding referendums, public discussion of draft laws and regulations and issues of state and local importance, by means of public control over the actions of the authorities, and other ways specified by the law.
3. State and local self-government bodies, as well as officials are obliged to maintain an open, transparent and regular dialogue with citizens and their associations, to conduct broad consultations with stakeholders.
4. The decision-making process in state and local self-government bodies maintains openness and proximity to citizens.

Article 33. Suffrage

1. Citizens have the right to freely elect and be elected to state and local self-government bodies, and take part in referendums.

Article 54. Universal suffrage

2. The right to be elected by the people as deputies, to the state posts and posts in local self-government bodies, is determined in accordance with the Constitution and organic law. This right may be restricted by a court decision for a person convicted of an offence, if the deprivation of the right to be elected is proportionate to the crime and circumstances of the case.
3. The law may specify the possibilities and conditions for the participation of foreign citizens and stateless persons in local self-government elections.

Article 65. Principles of holding referendums

1. National and local referendums (popular vote) may be held to resolve issues of public importance.

Article 108. Hramada

1. The community of citizens living in the territory of a local self-government unit – the Hramada – have the right to independently and under its own responsibility decide on issues of local importance.

2. Local self-government is carried out by the Hramada through local self-government bodies, as well as directly in cases provided for by law.
3. The Hramada promotes the development of various direct forms of citizen participation in local self-government.

Article 111. Formation of local self-government bodies

1. Representative bodies of local self-government⁵ and heads of executive local self-government bodies, in cases when their election is prescribed by direct vote of citizens, are elected by citizens residing in the respective territory. The term of office of the representative body of local self-government is four years.
2. Regular elections of the representative body of local self-government shall be held on the second Sunday of April of the final full calendar year of the term of office of the representative body of local self-government.
3. [...]
4. The executive bodies of local self-government are formed by the units of local self-government independently in accordance with the organic law; they execute the decisions of representative bodies of local self-government and are accountable to them.

19. In Chapter 2 of the draft law ('Forming of representative bodies of local self-government'), Article 12.1 states that *Radas* (the assemblies of the *hramadas* at the first tier) and *Soimiks* (the assemblies of the *pawets* at the second tier) are representative bodies of territorial communities, exercising the functions and powers of local self-government on their behalf and in their interests. According to Article 13 ('Forming of Radas and Soimiks') *radas* and *soimiks* are composed of deputies elected by the population of the respective territory based on universal, equal, and direct suffrage by secret ballot.

20. The election of the members of the *rada* is conducted under a majoritarian system (Article 13.2), while the election of the members of the *soimik* is conducted in the following manner: 50% of deputies are elected in majoritarian constituencies, while the remaining 50% are elected from political party lists (Article 13.3). The office term is set at four years for both *radas* and *soimiks* (Article 13.6).

21. The chairperson of the *rada* or *soimik* (Article 18) is elected from among the deputies through a secret ballot, leads the activities of the respective assembly, and is accountable to it. The assembly can even decide (in plenum) the early termination of the powers of the chairperson (Article 19). If the latter does not happen, the powers of the chairperson end on the day of the opening of the first session of the assembly elected in the next scheduled local elections.

22. The draft law stipulates a main executive body in a collective form. In Article 29.1, it is provided that in *hramadas* and *pawets* the *Uprava* is the executive and administrative body of the respective assembly which creates it and elects (for a four-year term) the chairperson of the *uprava* through secret ballot and by majority of all deputies (Article 30.1). If this majority is not reached, a second round is held between the top two candidates, and a relative majority suffices (Article 30, paragraphs 2 and 3). The chairperson performs their duties on a full-time professional basis and cannot engage in entrepreneurial or other paid activities. The assembly

⁵ The draft Constitution also entails a special Article 112 on the "Exclusive competences of the representative body of local self-government" (for instance the approval of the budget and implementation report, adoption of the statute, determination of the management of the local self-government property, establishment of local taxes and fees, election of an auditor, appointment of a local referendum, revoking decisions of the executive body, etc.

may prematurely terminate the powers of the chairperson. The grounds for terminating these powers and the relevant procedure are regulated by the charter of the *hramada* or *pawet* (Article 29.4).

23. The *uprava* is formed on the basis of its chairperson's proposal and the relevant approval by the assembly (Article 30.4). The *uprava* includes deputy chairperson(s) and heads of divisions or departments. The executive bodies are accountable and report to the respective assemblies (*radas / soimiks*) in their activities. The *uprava* forms a Magistrate, consisting of deputy chairpersons, the head of affairs, and the heads of divisions (departments), with advisory voting rights. It should be underlined that the assemblies have the power to annul (Article 26.1.15) acts of executive bodies that do not comply with the Constitution or laws of the Republic, other legislative acts, or decisions of the respective assembly made within its powers.

24. According to the draft law, the political organisation of the first (*hramadas*) and the second tier (*pawets*) in Belarus seems to follow a pattern that is more common in some northern European countries, where the executive body is collective and elected by the assembly. It cannot be predicted, however, at this point, how this pattern will be configured in practice and whether it will rather fit the collective form (e.g., as in the Netherlands) or the committee-leader form (e.g., Denmark or Sweden) as they have been elaborated and distinguished by Mouritzen and Svara in 2022.⁶ The precise operation of the aforementioned institutional settings in the praxis of a democratic Belarus will depend on a wide set of factors, including the party system, the political actors, and the socio-economic circumstances that will prevail.

25. In any circumstance, the Charter does not favour any particular form of local political organisation and leaves the decision to domestic legislation. However, Resolution 21 (1995) of the Congress has clearly stated that "recent legislation" in some countries that introduced the direct election of mayors would strengthen local authorities.⁷ In 2002, the Congress established a classification system for the procedures implemented in member states of the Council of Europe for electing or appointing the executive.⁸ This classification system comprises four categories: i. election or appointment by the local assembly; ii. direct election by the people; iii. appointment by central or regional government or an independent authority; iv. exercise of executive powers under the assembly system.

26. The fact that the Charter grants broad discretion regarding the system for selecting the executive does not mean that it does not set limits both on the method of selection and, conversely, on the possibility of recalling the executive. Thus, the Congress has emphasised that "*a procedure which fails to provide for election of the local executive no longer appears appropriate in the context of modern-day local democracy*".⁹ It can thus be concluded that the establishment of an executive body through the appointment of an individual by a state authority constitutes a violation of the principles outlined in the Charter. Following the Recommendation 113 (2002) of the Congress, national legislation should ensure that the

⁶ E. Mouritzen and J. Svara (2002), *Leadership at the Apex*, University of Pittsburgh Press, pp. 60-63.

⁷ Resolution 21 (1995) on the Topical Issues Report of the Chamber of Local Authorities, Strasbourg, June 1995, available at <https://rm.coe.int/1680719a7f>

⁸ Congress of Local and Regional Authorities of the Council of Europe, Recommendation 113 (2002) on relations between the public, the local assembly and the executive in local democracy (the institutional framework of local democracy), available at <https://rm.coe.int/16807191c1>

⁹ Ibid., Recommendation 113 (2002) of the Congress.

Charter's requirement for the executive to be accountable to the assembly is met, and "*provide for procedures enabling the assembly to remove the executive from office*". The aforementioned provisions in the draft law fulfil these requirements.

27. Concerning citizen participation at the local level, the draft Constitution includes, as already mentioned, significant provisions. For instance, Article 32 on the right to participate in the administration of social and state affairs and Article 65 on principles of holding referendums. In addition, the existing Council of Europe soft law on local democracy contains the Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life,¹⁰ which encourages participatory budgeting and consultative mechanisms. It encourages a legal framework that serves as a policy infrastructure to establish a resilient, responsive, and accountable system of local democracy.

28. From its part, the draft law acknowledges in Chapter 6 the right of citizens to engage in local self-government (Article 44), while the primary instruments of direct democracy are enumerated alongside representative mechanisms (Article 45). The draft law defines the local assembly as the "primary" form of direct participation (Article 46), enables local referendums on issues within the competence of the assemblies (*radas / soimiks*) (Article 47), establishes a citizen initiative to place items before the council within set time limits (Article 48), permits self-imposed voluntary contributions for specific local projects (Article 49), frames public hearings with a duty on councils to consider the proposals (Article 50), provides a basic legal anchoring for participatory budgeting (Article 51), and keeps the door open to other lawful forms of participation (Article 52).

29. Chapter 6 has been constructed in such a manner as to supplement representative democracy by means of a compendium of direct-participation mechanisms. This is consistent with the conception of "*democratically constituted*" local authorities as outlined in the Charter, and the expectation in its Additional Protocol that states "*shall secure*" the right to participate and "*encourage measures*" such as consultative processes, access to information, and procedures to take citizens' views into account. The draft law's explicit recognition of the citizens' right to participate (Article 44), the citizen initiative with a three-month decision window (Article 48.3), and the obligation to consider proposals emerging from public hearings (Article 50.2) are indicative of a positive trajectory.

30. In relation to the consistency of the present text with the Council of Europe's soft law, the Committee of Ministers Recommendation CM/Rec(2018)4 on citizen participation is of pertinence. It encourages the establishment of frameworks for participatory processes, including deliberation, citizen proposals, participatory budgeting, and e-participation, with quality criteria such as openness, inclusion, transparency, and feedback loops. Chapter 6 reflects several of these tools (i.e., assemblies, hearings, participatory budgeting, initiatives) but would benefit from explicit inclusion/exclusion rules, outreach requirements for underrepresented groups, accessibility standards (including digital), and feedback/monitoring duties.

¹⁰ Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, available at <https://rm.coe.int/16807954c3>

31. Recommendation CM/Rec(2022)2 on democratic accountability¹¹ calls for the following institutional measures to be put in place: scrutiny, reporting and remedies. Chapter 6 initiates the establishment of “accountability from below”, a concept defined as the obligation of citizens to adhere to stipulated deadlines for citizen initiatives and to consider proposals put forward. However, the chapter lacks enforceable rights to answers, such as receiving reasoned responses, publishing outcomes of participation, and providing remedies when councils ignore citizen input.

32. As already pointed out, Chapter 6 incorporates many positive provisions, such the ones for participatory budgeting and self-imposed contributions (Article 49) that tie participation to tangible projects and resource allocation, which is conducive to the establishment of trust and the alignment of expenditure with local priorities. In addition, public hearings with a duty to consider outputs (Article 50.2) represent a significant advancement in the direction of deliberative practice and align with the principles of the Charter’s consultation ethos.

33. However, there are also some gaps and weaknesses, such as the overreliance on subsequent legislation. It is evident that several provisions defer the procedure to other laws or to the charters of each *hramada* and *pawet* (e.g., Article 46, Article 50.3, Article 51). In the absence of national-level minimum standards, there is a risk that practice may become uneven. This could result in tokenism, thereby undermining the equality and legal certainty expected by the Charter and soft law.

34. The draft does not provide any assurances with regard to the promotion of inclusion and accessibility. There is no obligation for outreach to women, young people, minorities, persons with disabilities, or hard-to-reach groups, nor is there any provision for accessibility rules to be implemented (digital, physical, or linguistic). This falls short of the quality criteria for inclusive participation set out in the above-mentioned Committee of Ministers Recommendation CM/Rec(2018)4.

35. While there is an obligation to “consider” hearing proposals, there is no duty to provide reasoned and public responses, publish participation reports, or track implementation. Furthermore, there is a lack of clarity regarding the definition of data-openness standards, with the absence of open data pertaining to proposals, votes and budgets being a notable omission. This is in direct conflict with the accountability culture encouraged in Recommendation CM/Rec(2022)2.

36. Regarding local referendums, a critical procedural detail is omitted. Article 47 leaves key matters to subsequent legislation (i.e., triggers, signature thresholds, campaign regulations, review of legality, and excluded subjects). In the absence of appropriate regulatory frameworks, the efficacy and timely administration of referendums may be compromised, potentially leading to outcomes that are either illusory or destabilising.

37. Participatory budgeting safeguards are missing, since Article 51 anchors participatory budgeting but is deficient in a number of key areas. It fails to incorporate the minimum co-

¹¹ Recommendation CM/Rec(2022)2 of the Committee of Ministers to member States on democratic accountability of elected representatives and elected bodies at local and regional level, available at <https://rm.coe.int/0900001680a57739>

design rules, eligibility criteria, conflict-of-interest and integrity provisions, evaluation cycles, or a guaranteed budget share. The Contemporary Commentary and Committee of Ministers recommendations suggest proceduralising clearly to avoid ad hocism.

Articles 4 and 5: Scope of local self-government and protection of local authority boundaries

38. As already pointed out, Article 3 of the Charter refers to the legal right and the factual ability of local authorities *“to regulate and manage a substantial share of public affairs under their own responsibility.”* In Article 4.1, the Charter requires clarity and legal certainty for the regulation of the *“basic powers and responsibilities”* of local government bodies, but in exceptional cases it allows the assignment of specific tasks not already included in the national legal framework. The Charter guarantees the right of local authorities to exercise their initiative on matters not explicitly excluded from their competence by law (Article 4.2 on general competence), it emphasises subsidiarity (Article 4.3) and the full and exclusive powers of local authorities (Article 4.4), it provides for discretion when local authorities exercise delegated tasks (Article 4.5), and appropriate consultation before central planning and/or decision making (Article 4.6.). Regarding the latter, the Congress Resolution 437(2018) on the consultation of local authorities¹² requires institutionalised, timely and efficient dialogue between national and sub-national local self-government levels, with a particular focus on decentralisation.

39. The draft Constitution incorporates some of the aforementioned elements of the Charter. Notably, Article 110.1 explicitly refers to the principle of subsidiarity and to the delineation of powers by organic law, while the clause of general competence is incorporated in the second paragraph, and the third paragraph provides for the legal basis for the delegation of powers to local or regional self-government.

Article 110. Delineation of powers

1. The delineation of powers between state authorities and local self-government bodies, as well as between local self-government bodies of different territorial levels, is regulated by organic law on the basis of the principles of subsidiarity and proportionality of resources to the scope of powers.
2. The units of local self-government are entitled, on their own initiative, to take decisions on all matters not referred by law to the powers of the state authorities and the higher territorial bodies of local self-government.
3. The delegation of authority by the State to the unit of local self-government is carried out by law or by treaty.

40. In the draft law, Article 1 ('Main terms used in this Law'), local self-government is defined as *“the right and ability of local communities to independently resolve issues of local significance”*. This wording is partially repeating the Article 3.1 of the Charter, avoiding, however, reiterating the Charter's guarantee for a *“substantial share of public affairs”*, and limiting the functional scope to *“issues of local significance”*, a term which can raise ambiguities, since it is quite open to different interpretations. On the other hand, Article 23 of

¹² Congress of Local and Regional Authorities of the Council of Europe, Resolution 437(2018) on the consultation of local authorities by higher levels of government, available at <https://rm.coe.int/16808d3c72>

the draft law undertakes a basic distinction between own and delegated competences, where the latter is carried out “*in accordance with the law*” (which appears to allow delegation through by-laws) and the former “*covers matters of local significance and is carried out solely by local self-government bodies*”.

41. The same article indicates such matters of local significance, including:

- organisation and regulation of urban development;
- road and street maintenance;
- urban area improvement;
- preschool education and school education;
- social assistance and protection of children, people with disabilities, and pensioners;
- healthcare and primary medical care, etc.

42. Articles 25 to 28 of the draft law refer to the allocation of different types of powers to *hromadas* and *pawets* and to the different types of these powers. Article 26 deals with constitutive and functional responsibilities of the assemblies (*radas* and *soimiks*) regarding the election of other bodies, approval of staff structure and number of employees, decisions on referenda, local borrowing, etc.

43. Article 25 contains a list of the matters falling under the competence of the assembly (*soimik*) at the regional level (*pawet*): 1. Regional development (proposals for development programmes, promoting investment activities, etc.); 2. Environmental protection (environmental protection measures, forest classification, etc.); 3. Development of regional infrastructure (primarily roads and public passenger transportation networks); 4. Development of culture, sports, and tourism; 5. Co-ordination of activities of *hramadas* aimed at disaster management within the *pawet* limits; 6. Management of professional, secondary, and higher education institutions; and 7. Provision of specialised and emergency medical care.

44. Article 28 (‘Peculiarities of the Exclusive Powers of the Soimik’) contains a list with exclusive powers of the regional assembly: Establishing rules for the use of water intake facilities; Adopting decisions, on the proposal of the respective *rada*, regarding the creation of special free and other zones; Adopting decisions, within the limits defined by laws, on issues of combating natural disasters, epidemics, and epizootics, etc.

45. Article 27 (‘Peculiarities of the Exclusive Powers of the Rada’) contains a list of matters addressed exclusively in plenary sessions of the *rada*: Providing consent, in accordance with legislation, for the placement of new objects, including sites for waste disposal; Approving local urban planning programmes and master plans for development; Imposing bans on the sale of alcoholic, low-alcohol beverages; Deciding on issues of combating natural disasters, epidemics, epizootics, within the limits defined by law, for violations of which administrative liability is provided; Taking decisions on hazardous waste management issues, etc.

46. Concerning the compliance with the Charter, the soft law of the Council of Europe and other international standards, it should be noted that the draft law is, in most cases, not precise concerning the exact content of responsibilities and the concrete tasks of local and regional governments. It seems that the necessary specifications are left to sectoral legislation or even to by-laws and ordinances. This would not, however, be sufficient to meet the requirements of Article 4.1 of the Charter for a statutory basis and a level of clarity that the Contemporary

Commentary calls essential to predictability and protection of autonomy. On the other hand, the general reference to “*issues of local significance*” and the indicative lists of powers appear to cumulatively support a general competence approach in compliance with the Charter (Article 4.2.).

47. The principle of subsidiarity (Article 4.3 of the Charter) is explicitly introduced in Article 3 of the draft law, while the indicative lists of powers per local self-government tier appear as an implicit reference to it. To strengthen the practical relevance of this fundamental principle, the draft could include explicit criteria (extent, nature, efficiency/economy) for allocating functions. Article 4.4 of the Charter requires full and exclusive powers, while Article 4.5 requires a certain level of discretion also for delegated powers. The aforementioned articles of the draft law mention several exclusive responsibilities; however, the relevant formulations are usually vague, thus undermining the exclusivity of these tasks. In addition, a minimum level of discretion in delegated powers is not explicitly provided.

48. The biggest gap, however, is the lack of a systematic provision in the draft law about the timely and efficient consultation of local (and regional) authorities as required by Article 4.6 of the Charter when planning and decision-making processes unfold at higher levels of government. This also affects compliance with Article 5 of the Charter, where prior consultation (even through referendum) in cases of changes in boundaries is explicitly provided. The current version of draft law includes in Article 57.3 the provision that “*local self-government bodies have the right to participate in the consideration of matters by state bodies that affect the interests of local self-government.*” This formulation, however, appears to be too vague to be sufficient for the necessary operationalisation of consultation in practice.

49. A new version of the draft law should add an explicit general competence clause (e.g., “Hromadas may undertake any matter of local significance not excluded by law”) and prohibit sub-statutory acts from narrowing their scope of action. Allocation criteria should be crystallised in line with the principle of subsidiarity which is already guaranteed both at the level of the draft statutory law and the level of the draft Constitution. In addition, the exclusivity of own powers should be legally fortified and discretion in delegated tasks explicitly specified, except for narrowly defined uniform acts. Finally, a new article should embed consultation duties in more detail, also introducing relevant procedures and requirements in line with the Charter and Council of Europe soft law.

Articles 6 and 7: Appropriate administrative structures and resources for the tasks of local authorities, and conditions under which responsibilities at local level are exercised

50. According to the Charter, local authorities have discretion to determine their own internal administrative structures and the power to organise their own affairs is accordingly a part of the autonomy enjoyed by local entities (see the Contemporary Commentary on Article 6.1). Local authorities also enjoy autonomy in the field of human resources, have discretion to decide on the remuneration of their staff, and can establish a sound and efficient staff policy that would permit the recruitment of high-quality staff (see Contemporary Commentary on Article 6.1).

51. The draft Constitution includes some relevant provisions, such as Article 109 ('System of units of local self-government'), where it is provided (paragraph 3) that *"each unit of local self-government has its own statute."* This could be interpreted as an implicit constitutional guarantee of a certain level of organisational autonomy. In Article 111 ('Formation of local self-government bodies'), paragraph 4 stipulates that *"the executive bodies of local self-government are formed by the units of local self-government independently in accordance with the organic law"*.

52. While the aforementioned constitutional provisions seem to imply the organisational autonomy of local authorities, statutory law maintains a relevant span of discretion on organisational matters and on the legal framework for the management of human resources. An explicit constitutional guarantee of merit-based local civil service does not exist, and this is also left to the law. The draft Constitution does not contain either any provisions regarding the conditions of office of local elected representatives and the free exercise of their functions.

53. Article 26 of the draft law provides that the assembly approves, upon proposal of the chairperson, its own staff structure, and the number of employees in accordance with a typical staff table approved by the central government. The assembly also approves, upon proposal of its own chairperson, the chairperson of the *uprava* of the *hramada* or *pawet*, and the heads of divisions or departments (if no divisions exist) of the *uprava*. Finally, the assembly also approves, upon proposal of the chairperson of the *uprava*, the structure and administration of the *uprava*, and its number of staff in accordance with the typical staff table approved by the central government.

54. Article 29 of the draft law establishes the *uprava* as the executive and administrative body of each assembly. The divisions (departments) of the *uprava* are considered structural subdivisions of the *uprava* and may be granted legal entity status by decision of the *rada* or *soimik*. The activities of the chairperson of the *uprava* are governed by the local charter, and by the regulations of the assembly (*rada* or *soimik*). The legal status of the employees of the *uprava* and its structural subdivisions shall be regulated by a special law "On the Legal Status of Civil Servants and Employees of Local Self-Government Bodies" (Article 29.7). The procedure for hiring and dismissing employees of the *uprava* is determined by the Charter of the *hramada* or *pawet* (Article 30.6). According to Article 32, the chairperson of the *uprava* organises its work and manages its current affairs; moreover, the chairperson hires and dismisses employees (except those appointed by the assembly).

55. Relevant soft law of the Council of Europe underlines the task of local and regional authorities to organise their services in such a way as to efficiently meet the needs of the population living on their territory, taking into account the need to constantly improve the quality of their public services to keep pace with changing social demands and technological changes.¹³ The aforementioned provisions of the draft law are offering local authorities a span of discretion they could take advantage of; however, it would be advisable to include guiding principles regarding their organisational choices and human resource management at the local level, unless this is intended to be done by the special law "On the Legal Status of Civil

¹³ See Recommendation CM/Rec(2007)4 of the Committee of Ministers to member states on local and regional public services, available at <https://rm.coe.int/1680a43b5c>

Servants and Employees of Local Self-Government Bodies” mentioned in Article 29.7 of the draft law.

56. The Charter provides that conditions of office for elected representatives (Article 7) must enable a free mandate, provide adequate compensation, and targeted incompatibilities should be determined by statutory law or fundamental legal principles. Regarding the status of elected representatives in local self-government bodies, the draft law provides, in Article 14, that a deputy of the *rada* or *soimik* has the full range of rights ensuring active participation in the activities of the respective assembly, and the bodies it forms. The chairperson and other deputies of the assembly may be allowed to work on a professional basis by the decision of their own assembly.

57. It can therefore be concluded that the relevant provisions of the draft law for the status of deputies are concentrated in Article 14, which regulates their representative role and the duties of their participation, and provides for the possibility of allowing the chairperson and deputies of the assemblies to fulfil their tasks not on an honorary but on a professional basis. Concerning the powers and guarantees of deputies, the draft law refers to the Constitution (where relevant provisions exist only for deputies) and other legislation.

58. In other words, the draft law does not deal with issues of guarantees for the deputies' free mandate and conditions of office (Article 7.1 of the Charter), as to remuneration or as to compensation for expenses and loss of earnings (Article 7.2), nor as to the functions and actions considered incompatible with elective office. Only in the Constitution (Article 74) there is a provision establishing the incompatibility of the position of member of the parliament (*Soim*) with the position of deputy of a representative body of local self-government. This provision corresponds to Article 7.3 of the Charter, which seems to encourage signatory parties to prevent the simultaneous holding of more than one elected office (see Contemporary Commentary on Article 7.3).

59. As regards the early termination of the term of office of a deputy in a local or regional assembly, Article 14.1 of the draft law refers to other laws (in the Constitution there are provisions for members of the parliament only) to determine the cases and reasons where this is provided for. In contrast, the draft law lists grounds for premature termination of the powers of the assembly as an assembly body in Article 16.

60. To avoid legal uncertainty and respect the principles and provisions of the Charter, one solution would be to add to the draft law a section with clear rules on allowances/remuneration, incompatibilities, immunity, and grounds/procedure for early termination of a local deputy's mandate. The other solution would be to add a corresponding set of provisions on the Status of Local Deputies to the Electoral Act.

Article 8: Administrative supervision of local authorities' activities

61. The Charter stipulates that the legal framework for administrative supervision of local authorities' activities should be included in the Constitution or statutory law (Article 8.1). The control of expediency has been confined to delegated functions performed by local authorities while the Charter only permits a review of legality for decisions and actions on local affairs

(Article 8.2.). In any case, administrative supervision should be exercised according to the principle of legality (Article 8.3).

62. The draft Constitution refers to the institution of administrative supervision (Articles 107 and 116), seeming to accept the perspective of fragmented (across different sectors and authorities) administrative supervision, by contrast to the so-called “prefect model” (unitary, in principle, administrative supervision over local authorities) which prevails in many European states.

Article 107. Supervision of the activities of local self-governments

1. The ministries, within the limits of their powers, and the authorised representatives of the Government supervise the uniform implementation of laws and regulations by the bodies of local self-government in the corresponding administrative and territorial units.
2. The ministries and the authorised representatives of the Government have no right to interfere with the competence of local self-government bodies, and they exercise their powers in accordance with the law.
3. If a local self-government body makes a decision that contradicts the law, the ministries, and the authorised representatives of the Government, in accordance with the established procedure, propose to the local self-government body to cancel this decision, or go to court.

Article 116. Supervision over the observance of legislation

Supervision over the observance of the laws and regulations by local self-government bodies, as well as control over the implementation of powers delegated by state authorities, is carried out by state bodies in the manner prescribed by law.

63. The draft law contains two chapters dedicated to administrative supervision. At first, Chapter 9 (‘Supervision and control over the activities and decisions of local self-government bodies and officials’), which includes Articles 59 to 63, defining principles (Article 59: legality, proportionality, non-restriction of own competence), different forms of supervision and control (Articles 59 to 61: state supervision and control, financial and internal control), and basic procedures of the latter two forms (Articles 62 and 63).

64. Second, Chapter 10 (‘State supervision of the activities of local self-government bodies and officials’), which includes Articles 64 to 68. Article 64 defines that the supervisory authorities over local self-government bodies are “*the Government’s Authorised Representatives in the Pawets*” (paragraph 2), while control over the implementation of state-delegated powers is carried out by the government and ministries within their respective competencies (paragraph 3). These provisions introduce a clear distinction between supervision over local and regional government competencies for local affairs by authorised representatives, and control over the implementation of delegated powers by the central government and the ministries.

65. Preventive supervision is provided by Article 65 of the draft law, which defines that the approval of decisions of local self-government bodies must be provided no later than within 30 days from the day the decision was submitted; otherwise, the decision is considered adopted in the submitted version. Whether subject to state approval or not, decisions of all representative and executive bodies of local self-government must be published on the relevant portal on the Internet within seven days of their adoption. Supervisory authorities have

the right to request additional information necessary for the exercise of their supervisory powers in the form provided by the legislation on document circulation (Article 66).

66. The draft law stipulates the progressive augmentation of supervisory measures and instruments. At first, if the detected violation of the law concerns the decision-making process and it is perceived as a minor one by the supervisory authority, the latter may limit its response to issuing a warning regarding the inadmissibility of such violations (Article 67.5). If a supervisory authority concludes, based on its own analysis, that a decision of a local self-government body is unlawful, the supervisory authority should first take measures for a pre-trial settlement of disputed issues (Article 67.4). If such a settlement is not reached, the supervisory authority is obliged to file a lawsuit in court to have the decision declared invalid. If necessary, the implementation of the respective decision may be suspended by a court ruling until the claim is reviewed on its merits (Article 67.3).

67. The draft law explicitly enshrines the principle of proportionality, while designating different bodies to exercise state supervision depending on the nature of the cases being investigated. Thus, for cases of local interest, specific bodies (authorised representatives of the government) are designated at the *pawet* level, while for delegated tasks, a general reference is made to the relevant competence of the government and the respective line ministries. For delegated competences, supervisory responsibilities appear to be fragmented among several bodies.

68. Article 57.2 of the draft law ('Guarantees of Local Self-Government, its Bodies, and Officials') stipulates that *"State administration bodies and their officials do not have the right to interfere in the lawful activities of local self-government bodies and officials, nor to resolve issues assigned by the Constitution of the Republic of Belarus, this law, and other laws to the competence of local self-government bodies and officials."* The second part of the sentence could be interpreted as a prohibition for substitution as a means of supervision by state authorities, while the first part (a clause of non-interference in lawful activities) seems to introduce a general restriction of supervision to legality control, even though exceptions could be provided through special, for instance, sectoral legislation.

69. In any case, it would be useful to explicitly emphasise in the draft law that supervision is limited to legality control when it comes to the own competencies for local affairs of *hromadas* or *pawets*. In addition, it would be useful to incorporate more specific procedural rules and principles for all categories of state supervision (possibly with certain variations for state-delegated affairs), to add time limits for supervisory actions, and an explicit reference to the obligation to justify them. In addition, certain transparency measures should be introduced, such as the publication of supervisory actions and their results. Finally, it should be clarified explicitly whether the provisions of Article 67 apply in whole or in part to both basic categories of cases (local or state-delegated affairs).

Article 9: Financial resources of local authorities

70. To comply with Article 9 of the Charter, a democratic Belarus should guarantee local authorities concrete and adequate resources of their own (Article 9.1), commensurate to responsibilities (Article 9.2), with a fair share of total tax revenue based on diversified and

buoyant resources (Article 9.4) and autonomy to set local taxes (Article 9.3), while most grants should not be earmarked (Article 9.7). Access to the national capital market for capital investment should be ensured (Article 9.8), and an efficient equalisation mechanism for the benefit of financially weaker local authorities should be in place (Article 9.5). In addition, a properly designed mechanism should be elaborated to ensure timely, appropriate, and efficient consultation on fiscal matters, especially regarding the redistribution of allocated resources (Article 9.6).

71. It should be underlined that, in its current version, the draft Constitution is rather vague in this respect, except for the principle of commensurate funding (Article 9.2 of the Charter), which is guaranteed in Article 113.3 (only regarding state-delegated tasks and tasks imposed through state actions and decisions), and the principle of adequate financial resources (Article 9.1 of the Charter), which is guaranteed in Article 154.4 of the draft Constitution.

Article 113. Local budgets

1. Revenues of units of local self-government are formed at the expense of state and local taxes, non-tax revenues in the manner prescribed by law.
2. The State, together with local self-government bodies, corrects the financial situation of local self-government units through taxation and allocation of grants, subsidies, and subventions.
3. Expenditures of local self-government units, associated with the implementation of the powers delegated by state authorities, and of those arising from the actions and decisions of state authorities, are fully funded from the state budget.

Article 154

4. The deduction amounts from state taxes and other compulsory payments, which, in whole or in part, are allocated to local budgets in accordance with the law, are determined based on the scope of the powers of local governments.

72. According to Article 7 ('Organisational and Legal Basis for Local Self-Government'), paragraph 2 of the draft law, the *"Communal property of Hramadas and Pawets forms the material and financial basis of local self-government."* The draft law includes a special Chapter 4 ('Material and Financial basis of Local Self-Government') for local self-government finance and property comprising Articles 34 to 41. Article 34 ('Communal Property') stipulates that *"Hramadas and Pawets have the right of communal property over movable and immovable property, revenues of local budgets, extrabudgetary funds, land and natural resources, and, in accordance with the law, over communal enterprises, institutions, and organisations [...], shares in the property of enterprises, institutions of culture [...] other property and property rights, movable and immovable objects [...]."*

73. Concerning the local budgets, Article 35 of the draft law provides that, in accordance with the law, *"local self-government bodies independently develop, approve, and execute the corresponding local budgets"*, while this *"independence of local budgets is guaranteed by their own and state revenues assigned to them on a stable basis, as well as the right to independently determine the directions for the use of local budget funds"*. These provisions appear to comply with Article 9.1 of the Charter on *"adequate financial resources of their own"* and the right to *"dispose freely"* the revenue of these resources. However, the aforementioned provisions do not make clear that this free disposal is restricted *"within the framework of their powers"* as requested by Article 9.1.

74. Through the provisions of Article 36 ('State Participation in the Formation of Local Budget Revenues'), the draft law appears to meet the requirements set out in Article 9.2 of the Charter (resources commensurate with legal responsibilities), Article 9.4 (resources keep pace with the real evolution of the cost of tasks), and Article 9.5 (financial equalisation to protect the weaker local authorities).

Article 36. State Participation in the Formation of Local Budget Revenues

1. The state financially supports local self-government, participates in the formation of local budget revenues [...]. It guarantees local self-government bodies a revenue base sufficient to provide the population with services that meet minimum social needs. To ensure social standards, a system of financial equalisation for Hramadas is applied, the procedure of which is regulated by legislation.
2. The minimum sizes of local budgets are determined in accordance with the law based on the budgetary provision standards per capita, taking into account the economic, social, natural, and ecological conditions of the relevant territories, based on the level of minimum social needs established by law.

75. Article 37 ('Revenues of Local Budgets') of the draft law provides that revenues of local budgets are formed from their own sources defined by law, as well as from state and local taxes, fees, and other mandatory payments. These revenues *"consist of tax revenues defined by law, income from the use of communal property, donations and grants [...], local fees, and other mandatory payments, as well as state subsidies."* Article 40 ('Local Taxes and Fees') stipulates that *"local self-government bodies may establish local taxes and fees"* under the law. In addition, a possibility is established (paragraph 2) to introduce local fees, *"by decision of the citizens' assembly at their place of residence, on the principles of voluntary self-taxation"*. By these provisions, the draft law seems to comply with Article 9.2 (financial resources from local taxes and charges).

76. Article 39 ('Balancing Revenues and Expenditures of Local Budgets') stipulates in paragraph 3 that *"in cases where the possibilities for balancing revenues and expenditures of local budgets are exhausted and the expenditures necessary for the execution of the powers granted to local self-government bodies by law are not covered, the state ensures the balancing of local budgets by transferring the necessary funds to the corresponding local budgets in accordance with the law."*

77. Finally, it should also be noted that Article 41.1 of the draft law ('Participation of Local Self-Government Bodies in Financial and Credit Relations') allows the *rada*, or other local self-government bodies at its decision, to obtain loans from higher budgets to cover temporary cash shortfalls with repayment by the end of the budget year, as well as receive loans from banking institutions up to 40% of the revenue part of the annual budget of the *hramada*. In this way, the draft seems to comply with Article 9.8 of the Charter (access to the capital market).

78. Concerning consultation on financial matters, the general clause of Article 57 ('Guarantees of Local Self-Government, its Bodies, and Officials') stipulates that *"local self-government bodies have the right to participate in the consideration of matters by state bodies that affect the interests of local self-government"*, but it is not clear how this could contribute to matching the requirements set out in Article 9.6 of the Charter about the obligation to consult local authorities *"in an appropriate manner, on the way in which redistributed resources should be allocated to them."*

79. Since most of the provisions of the draft law about local self-government finance remain at a general level without clarifying how the provisions will be specified and implemented, the conclusion is that its Chapter 4 includes a formal recognition of the material and financial basis of local government, but does not establish a framework of institutional and operational guarantees for fiscal autonomy as required by Article 9 of the Charter. Specific taxes (e.g., property tax) to be levied by local authorities, certain fees (e.g., waste collection fees), and certain other taxes in which local government will share the revenue should therefore be mentioned. The relevant details can, of course, be left for future regulation by another law.

Article 10: Local authorities' right to associate

80. In a country that, by European standards, is not densely populated and includes both rural and significant urban agglomerations, the need for intermunicipal co-operation will continue to exist even if extensive mergers of *hramadas* take place. It is therefore reasonable that both the draft Constitution and the draft law address this issue.

81. According to Article 115 of the draft Constitution ('Right to association and co-operation'), local self-government units *"have the right to co-operate and enter into associations with other local self-government units in order to carry out tasks of common interest."*

82. The draft law includes, at first, a single article incorporating some core principles (Article 6) and then a dedicated Chapter 7 on intermunicipal co-operation.

Article 6. Associations (Unions) of Territorial Hramadas and Pawets

1. Local self-government bodies may unite into associations (unions) in order to exercise their powers and protect the rights and interests of territorial Hramadas and Pawets in a more efficient way.
2. Local self-government bodies and associations thereof may join respective international associations and other voluntary unions of local self-government bodies.
3. The powers of local self-government bodies may not be transferred to voluntary associations and unions of local self-government bodies.

83. On a declaratory level, this article appears to meet the requirements of Article 10 of the Charter. The last paragraph of Article 6, however, could lead to misunderstanding and should therefore be amended to make clear that it refers to core powers of local government bodies.

84. Chapter 7 ('Intermunicipal Co-operation') of the draft law includes Articles 53 to 56. In Article 53 ('Intermunicipal Co-operation of Territorial Hramadas and Pawets') the aims of such co-operations are stated (i.e., development, quality of services, effective execution of powers). Article 54 refers to areas of co-operation, and Article 55 to forms of co-operation: Delegation of the execution of tasks; Implementation of joint projects to co-ordinate activities and pool resources; Joint financing (maintenance) of enterprises and institutions; Establishment of joint communal enterprises; Creation of joint management bodies (or combinations thereof), etc. Finally, Article 56 mentions different sorts of state incentives for co-operation and different conditions and methods for their provision.

85. In general terms, Chapter 7 represents a satisfactory attempt to regulate certain basic parameters of the intermunicipal co-operation regime in a future democratic Belarus. However, some improvements should be made, such as introducing procedural safeguards: defining the conditions for registration, the legal status, and the rules for joining or leaving intermunicipal entities; ensuring transparency and accountability; and requiring annual public reports and external audits of joint bodies.

Article 11: Legal protection of local self-government

86. According to the Contemporary Commentary, the Charter sets the requirement that local authorities should have the right to invoke and to defend in the courts the principles of local self-government, especially in the context of lawsuits in which their rights and powers are challenged or curtailed, or when those rights are endangered by the higher (central or regional) levels of government. “Recourse to a judicial remedy” (Article 11) means access by a local authority to either a properly constituted court of law or an equivalent, independent, statutory body. The draft Constitution provides for such a protection (Article 117), including an appeal at the Constitutional Court (Article 128). The draft law also includes provisions regarding judicial protection for local authorities.

87. According to the draft Constitution:

Article 117. Judicial protection of the rights of local self-government

Local self-government units and the bodies created by them have the right to judicial protection.

Article 128. Powers of the Constitutional Court

1. The Constitutional Court of the Republic of Belarus issues decisions:
 - [...]
 - on the constitutionality of the decision to appoint early elections to a representative body of local self-government, on the basis of the appeal by the Soim, in accordance with paragraph 1 of Article 118 of the Constitution;
2. On the basis of an appeal by the Soim, the President, the Government, [...] the Central Election Commission, [...] a local government body, the Constitutional Court considers disputes concerning the powers of the relevant authorities.

88. According to draft law:

Article 3. Main Principles of Local Self-Government

Local self-government is one of the foundations of the constitutional system of the Republic of Belarus; it is recognised and guaranteed throughout the entire territory of the Republic of Belarus and is implemented based on the following principles:

[...]

judicial protection of local self-government rights.

Article 57. Guarantees of Local Self-Government, its Bodies, and Officials

4. Local self-government bodies and officials have the right to appeal to the appropriate court regarding the invalidation of acts by state bodies, other local self-government bodies, enterprises, institutions, and organisations that infringe upon the rights of territorial Hramadas, or the powers of local self-government bodies and officials.

III. Conclusions and recommendations

89. The draft Constitution and the draft Law on Local Self-Government jointly constitute a valuable starting point for establishing genuine local democracy in Belarus. Their strengths lie in the recognition of the principle of local self-government, the dual territorial structure (first and second tier of government), the establishment of representative assemblies and accountable executive bodies, and the recognition of citizens' participatory rights. However, to fully comply with the Charter, both texts require substantial improvement.

90. First, constitutional guarantees must be strengthened. The draft Constitution must recognise that local authorities should manage a substantial share of local affairs and obtain sufficient discretion thereto, and furthermore incorporate more precise guarantees of financial autonomy. It must also include clear provisions on the consultation of local authorities on all matters that concern them.

91. Secondly, the draft Law on Local Self-Government should implement these constitutional principles through clear and detailed provisions:

- The scope of competences must be defined with precision, including more detailed descriptions, and delineating the distinction between powers that are inherent to local governments and those that are delegated. Furthermore, it is essential to ensure that discretion is explicitly guaranteed.
- Administrative supervision on local affairs must be strictly confined to legality control, in accordance with Article 8 of the Charter. It is imperative that supervisory procedures encompass elements such as time limits and transparency.
- It is imperative that the financial provisions outlined in Chapter 4 of the draft law are expanded to ensure the attainment of genuine fiscal autonomy. This should be achieved through the establishment of a transparent and diversified system of own-source revenues, the provision of the power to set local tax rates within the limits of national law, the implementation of predictable equalisation mechanisms, consultation on inter-budgetary transfers, and the granting of borrowing rights for investment.
- The conditions of office for elected representatives require clearer regulation, including the following: the right to freedom of mandate, adequate compensation and remuneration, incompatibilities, and protection from arbitrary removal. These conditions should all be statutorily guaranteed.
- The material and human resources provisions must secure organisational autonomy and merit-based local public service systems, ensuring professional integrity and stability.
- It is recommended that the provisions on citizen participation (Chapter 6 of the draft law) be strengthened by the introduction of enforceable procedural standards for referendums, public hearings, participatory budgeting, and feedback obligations.

- As outlined in Chapter 7, the promotion of intermunicipal co-operation should be complemented by the establishment of fiscal arrangements for joint entities, the implementation of accountability rules, and the assurance of legal personality guarantees.
- The supervision regime (Chapters 9 and 10) should clearly prohibit expediency control over own competences, ensure transparency, and provide for judicial appeal.

92. To provide a more comprehensive overview, it is vital to acknowledge that the Belarusian reform process should be guided by a Roadmap for Decentralisation, which should be implemented gradually. The following actions are to be taken to facilitate the process of constitutional change:

- The adoption of the draft Constitution and the draft Law on Local Self-Government;
- The preparation of complementary organic laws (on local finance, civil service, status of deputies, and inter-governmental relations);
- The phased transfer of competences with matching resources;
- The establishment of mechanisms for consultation and capacity building at local level.

93. Should the draft Constitution and the draft law be amended in accordance with the stipulated principles, it is conceivable that the foundations for a robust system of democratic local self-government could be laid. Such a system would meet the legal and political criteria of both the Council of Europe and the European Union, thereby enabling Belarus to integrate into the European framework of multilevel governance.