Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee)

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# Monitoring of the European Charter of Local Self-Government in Ukraine

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*Summary*

This is the third monitoring report on Ukraine since the country ratified the Charter in 1997. It follows the monitoring visit in Ukraine carried out from 4 to 6 March 2020. The report welcomes the progress that has been made through the decentralisation reform in Ukraine, including the creation of new amalgamated territorial communities who received additional competences and resources, the modernisation of the administrative territorial structure of the country, and important steps towards financial decentralisation. Ukraine also ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

The rapporteurs however express concern, inter alia, about the dependence of oblast and rayon councils on the local state administrations for the execution of their decisions, the absence of a comprehensive system of administrative supervision that would be in line with the requirements of the Charter, the existence of local recall procedures for local councillors and excessive money deposits for candidates to stand for some local elections, the lack of sufficient and concomitant finances available to local authorities who continue to be highly dependent on mostly earmarked upper-level grants, the inefficiency of the existing equalisation system, shortcomings in consultation procedure, and local authorities' shortage in specialised staff.

Consequently, they call on the Ukrainian national authorities to complete the decentralisation reform through revision of the constitution, and adopting legislation aimed at regulating the outstanding issues of the unclear delimitation and overlapping of competences, to continue financial decentralisation and to establish the executive bodies of oblast and rayon councils. In this respect, the Ukrainian authorities are also invited to replace the institution of oblast/rayon Head of Local State Administration by the more modern institution of Prefect. It is also recommended that Ukraine introduce a comprehensive and stable system of

1. L: Chamber of Local Authorities. R: Chamber of Regions.
EPP/CCE: European People's Party Group in the Congress.
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats.
ILDG: Independent Liberal and Democratic Group.
ECR: European Conservatives and Reformists Group.
NR: Members not belonging to a political group of the Congress.

consultation with local authorities and their associations and abolish recall procedures which are violating the principle of free mandate. Finally, the recommendation calls on the Ukrainian authorities to abolish disproportionate deposits for candidates in local elections.

*Document submitted to the Monitoring Committee for approval at its remote meeting on 17 September 2020.*

**PRELIMINARY DRAFT RECOMMENDATION**

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

*a.* Article 2, paragraph 1.b, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, stipulating 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 1, paragraph 2, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, stipulating 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.* Chapter XVII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

*d.* Sustainable Development Goals (SDG) of the United Nations 2030 Agenda for Sustainable Development, in particular Goals 11 on sustainable cities and communities and 16 on peace, justice, and strong institutions;

*e.* Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

*f.* Recommendation CM/Rec(2018)4 of the Committee of Ministers to Member States on the participation of citizens in local public life, adopted on 21 March 2018;

*g.* Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities, adopted on 4 April 2019;

*h.* previous Congress Recommendation on the monitoring of the European Charter of Local Self-Government in Ukraine 348 (2013);

*i.* Post-Monitoring Roadmap on local and regional democracy in Ukraine, signed on 20 May 2015;

*j.* the explanatory memorandum on the monitoring of the European Charter of Local Self-Government in Ukraine.

2. The Congress points out that:

*a.* Ukraine joined the Council of Europe on 9 November 1995, signed the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 6 November 1996 and ratified it without reservations on 11 September 1997. The Charter entered into force in Ukraine on 1 January 1998;

*b.* The Committee on the Honouring of Obligations and Commitments by the Member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) instructed Ms Gudrun MOSLER-TÖRNSTRÖM, and Ms Gunn MARIT HELGESEN with the task of preparing and submitting to the Congress a report on the monitoring of the European Charter of Local Self-Government in Ukraine;

*c.* The monitoring visit took place from 4 to 6 March 2020. During the visit, the Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the visit is appended to the explanatory memorandum;

*d.* The co-rapporteurs wish to thank the Permanent Representation of Ukraine to the Council of Europe and all those whom they met during the visit.

3. The Congress notes with satisfaction:

*a.* The considerable progress of the decentralisation reform in Ukraine since 2014, including the creation of new amalgamated territorial communities that have received additional competences and resources, the promotion of inter-municipal cooperation and important steps towards financial decentralisation;

*b.* the ratification of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (ETS No. 207) on 16 December 2014;

*c.* the abolition of the system of state control over local self-government through *"procuratora*" and the preparation of a new comprehensive system of state supervision to bring it in line with the Charter;

*d.* the proposed amendments to the Constitution of Ukraine on the decentralisation of power. They constitute a significant step forward in the democratisation of the country and open the door for the finalisation of the decentralisation reform, to bring the system of local self-government in conformity with European standards and best European practice;

*e.* the planned introduction into the constitution of the principles of subsidiarity and of ubiquity (or omnipresence) of *hromadas* and the planned replacement of the institution of Head of Local State Administration at *rayon* and *oblast* level by the more modern institution of Prefect;

*f.* the ongoing dialogue and close cooperation between the Ukrainian authorities and the Council of Europe and other international organisations aimed at promoting democracy, human rights, regional development and decentralisation;

*g.* changes to the electoral legislation which enabled internally displaced people to vote in local elections in the places where they currently live and set a 40% quota for women's representation.

4. The Congress expresses its concerns on the following issues:

*a.* The continuing dependency of *oblasts/rayons* on state administration for the execution and implementation of their decisions which weakens their powers as a fully-fledged tier of territorial self-government in Ukraine (Article 3.2);

*b.* disproportionally high deposits for some candidatures in municipal elections which can unduly restrict or even block some candidates who are not able to cover the high costs, in some cases, of such deposits from standing for local election (Article 3.2);

*c.* the existing local recall procedures for elected mayors and especially for councillors and the introduction of "imperative mandate" which run counter to the basic principle of the free mandate (Articles 7.1 and 3.2);

*d.* the lack of implementation of the principle of subsidiarity in the devolution of powers to subnational self-government authorities (Article 4.3, 4.5) and unclear delimitation and overlapping of competences (Article 4.4);

*e.* the shortage in specialized and well-trained staff at local level (Article 6.2);

*f.* the absence of a comprehensive system of administrative supervision coupled with a fragmented state control over local tasks as well as multiplication of expediency controls by different state authorities leading to a situation of uncertainty and unpredictability for local authorities (Article 8.2);

*g.* the lack of sufficient and concomitant financing of local authorities, low fiscal local autonomy and high dependency on mostly earmarked upper-level grants, notwithstanding some successful steps towards financial decentralisation. The existing equalisation system is not sufficient (Articles 9.1-9.5 and 9.7);

*h.* the unsystematic nature of consultation which is usually carried out on an ad hoc basis and does not always have a visible impact on decision outcomes (Articles 4.6, 5, 9.6);

*i.* the lack of a constitutional remedy available to local authorities to reinforce the level of judicial protection of local self-government in Ukraine.

5. In light of the foregoing, the Congress requests that the Committee of Ministers invite the authorities of Ukraine to:

*a.* finalise the ongoing decentralisation reform, including through the adoption of the constitutional amendments under consideration, which enshrine, *inter alia*, the principles of ubiquity and subsidiarity in accordance with the Charter;

*b.* establish *oblast/rayon* executive authorities that shall be accountable to *oblast/rayon* councils and shall take over the responsibility for the implementation of their decisions from *oblast/rayon* state administrations; provide oblasts/rayons with necessary human and financial resources so that they can function as fully-fledged tiers of territorial self-government;

*c.* reconsider the amount of deposits for some candidates to stand locally in order to ensure an open and fair political competition in local elections;

*d.* abolish local recall procedures for local councillors to ensure the respect of the principle of free mandate;

*e.* clarify the allocation of tasks and responsibilities between different levels of government, eliminate overlapping of competences and ensure that the delegation of powers concern all territorial communities;

*f.* provide efficient and easily accessible system of trainings for local and regional authorities' staff and establish financial and other incentives for local authorities to be able to attract and maintain specialised administrative staff to ensure competent delivery of high quality local public services;

*g.* introduce the institute of the prefect and a comprehensive system of administrative supervision which would be in line with the principles the Charter, notably the principle of proportionality;

*h.* continue and advance the systematic financial decentralisation that would also promote regional development;

*i.* ensure a comprehensive and stable system of consultation with local authorities and their associations on all matters that concern them;

*j.* introduce the possibility of a constitutional complaint for local authorities to strengthen the judicial protection offered to the institution of local self-government.

6. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation on the monitoring of the European Charter of Local Self-Government in Ukraine and the accompanying explanatory memorandum in their activities relating to this member State.

**DRAFT EXPLANATORY MEMORANDUM**

**CONTENTS:**

## 1. INTRODUCTION: AIM AND SCOPE OF THE VISIT, TERMS OF REFERENCE

1. Pursuant to Article 1, paragraph 2, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, the Congress of Local and Regional Authorities (hereinafter referred to as "the Congress") regularly prepares reports on the state of local and regional democracy in all Council of Europe member states.

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") with no reservations on 6 November 1996 and 11 September 1997, respectively. The Charter entered into force on 1 January 1998 with no reservations, which, according to Article 13 of the Charter, means that it applies to all levels of self-government in Ukraine, including regional authorities.

3. In the domain of local and regional democracy, Ukraine also ratified:

- The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) on 21 September 1993, with entry into force on 22 December 1993.

- Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159) on 4 November 2004, with entry into force on 5 February 2005.

- Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No. 169) on 4 November 2004, with entry into force on 5 February 2005.

- Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (ETS No. 206) on 20 August 2012, with entry into force on 1 March 2013.

- Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority on 16 December 2014 (ETS No. 207), with entry into force on 1 April 2015.

4. The Congress has adopted the following previous recommendations on local and regional democracy in Ukraine:

- Recommendation 48 (1998)
- Recommendation 102 (2001)
- Recommendation 348 (2013)

5. Following the adoption by the Congress of Recommendation 348 (2013) and constructive post-monitoring dialogue since 2014, the Congress and the Ukrainian national authorities signed a roadmap for implementation of the decentralisation reform. On 21-22 November 2017, the Congress carried out a high-level visit to Ukraine with a view to discussing the progress made and challenges regarding decentralisation. The Council of Europe encouraged and assisted systematic changes in legislation including constitutional amendments as well as further measures for efficient institutional design, democratisation, devolution of powers and capacity building. The international community has been supporting the decentralisation reform, also allocating resources to its ubiquitous implementation. For this purpose, the Donor Board on Decentralization Reform in Ukraine was established in 2017 to co-ordinate the international technical assistance with the activities of the Ukrainian authorities and the donor community, including the Council of Europe. The overarching aim is to help to ensure the local self-government reform in Ukraine, in line with the European Charter of Local Self-Governance.

6. The Chair of the Monitoring Committee of the Congress appointed Ms Gudrun Mosler-Törnström, Austria (L, SOC) and Ms Gunn Marit Helgesen, Norway (R, EPP/CCE), as rapporteurs, and instructed them to prepare and submit to the Congress this report. An official monitoring visit in Ukraine was carried out by the aforementioned rapporteurs. The delegation was accompanied by a representative of the Congress secretariat and was assisted by Professor Nikolaos Chlepas (expert). The rapporteurs wish to express their thanks to the expert for his assistance in the preparation of this report. This group of persons will be hereinafter referred to as "the delegation".

7. The monitoring visit took place from 4 to 6 March 2020. During the visit, the Congress delegation met representatives of local and regional authorities, representatives of the government and other institutions. The detailed programme of the visit is appended to this report.

8. The delegation would like to thank the Permanent Representation of Ukraine to the Council of Europe as well as all the interlocutors for the information they provided to the delegation during the visit.

## 2. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

9. The Constitution of Ukraine was adopted on 28 June 1996 during an overnight parliamentary session after almost 24 hours of debate unofficially known as "the constitutional night of 1996".

10. With the proclamation of its independence on 24 August 1991 and the adoption of the constitution on 28 June 1996, Ukraine became a semi-presidential republic. In 2004, deputies introduced changes to the constitution, which tipped the balance of power in favour of a parliamentary system. These changes were accepted as legitimate both by the Constitutional Court of Ukraine and most major political parties. Later on, however, on 30 September 2010, the Constitutional Court ruled that the amendments were null and void, forcing a return to the terms of the 1996 constitution and again making Ukraine's political system more presidential.

11. This ruling became a major topic of political discourse. The Council of Europe's Human Rights Commissioner received several reports alleging that the resignation of four judges in the run-up to the decision occurred as a result of extensive pressure by the executive. In December 2010 the Venice Commission adopted "The Opinion on the Constitutional Situation in Ukraine"[2], in which it stated that it "considers highly unusual that far-reaching constitutional amendments, including the change of the political system of the country – from a parliamentary system to a parliamentary presidential one – are declared unconstitutional by a decision of the Constitutional Court after 6 years".

12. Following the protests in winter 2013/2014, an agreement brokered by the European Union saw the country return to the 2004 constitution. On 21 February 2014, the parliament passed a law that reinstated the 8 December 2004 amendments of the constitution. Consequently, the much-needed Ukrainian constitutional reform was conducted in two stages:

- The first part of the reform was conducted in respect of the judiciary and the law introducing the constitutional changes was adopted by the Verkhovna Rada in June 2014. The Venice Commission formulated one opinion on the draft presented for discussion (CDL-AD(2015)027) and an opinion on the final draft as submitted by the President of Ukraine to the Verkhovna Rada on 25 November 2015 (CDL(2015)057).

- The second part of the constitutional reform concerned the decentralisation of power and was submitted by the President of Ukraine to the Verkhovna Rada on 16 July 2015. This text was the subject of two Venice Commission opinions:

  - CDL(2015)037 Draft Opinion on the Temporal Validity of Draft Transitional Provision 18 of the Constitution of Ukraine.
  - CDL-AD(2015)028 Opinion on the Amendments to the Constitution of Ukraine regarding the Territorial Structure and Local Administration as proposed by the Working Group of the Constitutional Commission in June 2015 endorsed by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015).

It should be noted that the Venice Commission opinions on this text were largely positive. The draft law was adopted on the first reading but was never presented for a second reading.

13. Debates on constitutional amendments also included ideas about the abolition of parliamentary immunity and even about a new constitution and a "clean state".[3] In its opinion from 2015, the Venice Commission had noted that in a political system with vulnerable democracy, as in Ukraine, the abolition of parliamentary immunity

2 Opinion on the Constitutional Situation in Ukraine adopted by the Venice Commission at its 85th Plenary Session, Venice (17-18 December 2010) CDL-AD(2010)044-e at https://www.venice.coe.int/WebForms/documents/?pdf=CDL-AD(2010)044-e
3. For a critical overview of this debate see: http://constitutionnet.org/news/weaker-ukrainian-parliament-and-de-facto-presidential-system-zelenskys-constitutional-reform; https://democracy-reporting.org/a-new-constitution-for-ukraine-briefing-paper/; www.opendemocracy.net/en/odr/ukrainian-constitution-reform-or-crisis/

could endanger the functioning and autonomy of parliament and disrupt the system of checks and balances.[4] Current President Zelensky has signed the amendment abolishing immunity; moreover, he tabled some new constitutional reform initiatives. In September 2019, the parliament forwarded the proposed amendments to the Constitutional Court to obtain a binding opinion on their compliance with substantive and procedural limitations on amendments.

14. On 3 February 2020, the Chair of the Committee on State Building, Local Governance, Regional and Urban Development requested the support of the Council of Europe in the current constitutional reform process concerning decentralisation in Ukraine. The Centre of Expertise for Good Governance submitted its preliminary comments to the proposed reforms included in the Draft Law "On Amendments to the Constitution of Ukraine (On Decentralisation of Power)", registered by the President of Ukraine to the Verkhovna Rada (No. 2598 of 13 December 2019) and subsequently, on 17 January 2020, withdrawn for further consultations, including with representatives of Ukraine-wide local government associations and local governments in regions.

15. This Draft Law on Amendments to the Constitution (LAC) includes changes to a considerable number of articles that are important for the status of local and regional self-government in Ukraine. These amendments will be analysed in part 3.1 of this report. It should be noted in advance that the Council of Europe has, in general, welcomed the proposed amendments to the Constitution of Ukraine on the decentralisation of power. They would "constitute a significant step forward in the democratisation of the country and open the door for the finalisation of the decentralisation reform, in line with European standards and best European Practice". However, the Council of Europe also considers that improvement is needed or recommended in a number of fields.[5]

16. The Council of Europe particularly welcomed the changes in respect of the administrative territorial structure of the country, the introduction of the principle of ubiquity (or omnipresence) of hromadas and the termination of the institution of rayon/okruh/oblast Head of Local State Administration ("Governor") and its replacement by the more modern institution of "Prefect". At the same time, it also underlined the need to avoid the politicisation of the prefect institution and to streamline, simplify and clarify the powers of the prefects and the procedure of administrative supervision. The latter should be exercised according to the principle of proportionality, in line with Article 8, paragraph 3, of the Charter. Furthermore, the relations between levels of sub-national government should be clarified and the provisions concerning local finance be improved.[6]

## 2.1 Local government system (constitutional and legislative framework, reforms)

### *The constitutional framework and its reform*

17. The current version of Article 85 of "The authority of the Verkhovna Rada of Ukraine" includes, *inter alia*:

> 29. establishing and abolishing districts, establishing and altering the boundaries of districts and cities, assigning localities to the category of cities, naming and renaming localities and districts;
> 30. calling regular and special elections to bodies of local self-government;…

18. According to the draft Law on Amendments to the Constitution No.2598 of 13 December 2019, the new version of this provision should be as follows:

> 29) creation and liquidation of hromadas, okruhs, oblasts, establishing and change of their boundaries, assigning hromadas to the category of villages, settlements, cities, designation and change of names of hromadas, okruhs, oblasts upon submission of the Cabinet of Ministers of Ukraine;
> 30) early termination of powers of hromada mayor, chairperson of hromada, okruh, oblast council in the manner prescribed by the Constitution of Ukraine;

19. The proposed amendment expands the previous powers of the Verkhovna Rada to all types of administrative territorial units. This could lead to a significant weakening of oblasts, which, in the current constitution, benefit from constitutional recognition and protection (Article 133 mentions all oblasts by name). The Charter does not prescribe the number of levels of self-government and the existence of more than one tier is more or less at the discretion of the national law makers. The fact that Verkhovna Rada will be taking the

4. European Commission for Democracy through Law (Venice Commission): CDL-AD(2015)013-e Opinion on draft constitutional amendments on the immunity of Members of Parliament and judges of Ukraine, adopted by the Venice Commission at its 103rd plenary session (Venice, 19-20 June 2015): www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)013-e
5. Centre Of Expertise For Good Governance, Preliminary comments on the Draft Law of Ukraine "On Amendments of the Constitution of Ukraine", CEGG/LEX(2020)2, Strasbourg, 20 February 2020, p. 20., paragraphs 70, 72.
6. Ibid, paragraphs 71,72.

decisions about the territorial configuration of sub-national government will have the advantage of ensuring more consultations at the highest political level but also the disadvantage of a possible excessive politicisation of the issues concerned.[7]

20. According to the current version of Article 92, the following matters, *inter alia,* can only be determined by law:

> 15. the principles of local self-government;
> 16. the status of the capital of Ukraine; the special status of other cities;
> …
> 20. the organisation and procedure for conducting elections and referendums;

21. According to the draft Law on Amendments to the Constitution, the new version of paragraph 16 should be: 16) legal status of administrative territorial units; legal status of the city of Kyiv as the capital of Ukraine and the city of Sevastopol in the system of administrative territorial structure of Ukraine."

This new version adds Sevastopol but excludes the possibility for the law to create "special status of other cities". According to the comments made by the Council of Europe, this does not conflict with European standards although, in practice, having the possibility to adopt laws offering special provisions for big cities other than Kyiv, in line with future demographic, economic and social development, would be useful.[8]

22. The draft Law on Amendments to the Constitution introduces the "Prefect" ('Uryadnik") institution. It combines two important functions: that of co-ordinating state services that are deconcentrated in the territory and that of supervising local authorities' activity. It would be also possible to place these two functions under different institutions, which would probably be more protective of local self-government. Notwithstanding, the Council of Europe does not recommend one solution or the other since they are both in line with the Charter.[9] A majority of European countries, in particular those that have transitioned towards democracy after 1989 and have subsequently conducted decentralisation reforms, have chosen to combine the two competences according to the "Prefect model".

23. The new prefect institution is expected to replace another very powerful one, that of Head of Local (oblast or rayon) State Administration, which also combines two important functions: the function (or authority) of co-ordinating deconcentrated state services (which would be taken over by the prefect) and that of executive authority of the oblast or rayon (in the future okruh) council. The latter is obviously at odds with Article 3, paragraph 2, of the Charter. In Recommendation 348 (2013) the Congress asked the Ukrainian authorities to establish, in districts (rayons) and regions, an administration under the responsibility of elected representatives. The introduction of executive bodies that would be accountable to the local or regional assembly would be in line with the Charter.

24. The current version of Article 118 is as follows:

> Article 118
> The executive power in oblasts, districts, and in the Cities of Kyiv and Sevastopol is exercised by local state administrations.
> Particular aspects of the exercise of executive power in the Cities of Kyiv and Sevastopol are determined by special laws of Ukraine.
> The composition of local state administrations is formed by heads of local state administrations.
> Heads of local state administrations are appointed to office and dismissed from office by the President of Ukraine upon the submission of the Cabinet of Ministers of Ukraine.
> In the exercise of their duties, the heads of local state administrations are responsible to the President of Ukraine and to the Cabinet of Ministers of Ukraine, and are accountable to and under the control of bodies of executive power of a higher level.
> Local state administrations are accountable to and under the control of councils in the part of the authority delegated to them by the respective district or oblast councils.
> Local state administrations are accountable to and under the control of the bodies of executive power of a higher level.
> Decisions of the heads of local state administrations that contravene the Constitution and the laws of Ukraine, other acts of legislation of Ukraine, may be revoked by the President of Ukraine or by the head of the local state administration of a higher level, in accordance with the law.

7 Ibid, paragraphs 58-59.
8. Ibid, paragraph 23.
9. Ibid, paragraphs 26-28.

> An oblast or district council may express no confidence in the head of the respective local state administration, on which grounds the President of Ukraine adopts a decision and provides a substantiated reply.
> If two thirds of the deputies of the composition of the respective council express no confidence in the head of a district or oblast state administration, the President of Ukraine adopts a decision on the resignation of the head of the local state administration.

25. According to the draft Law on Amendments to the Constitution, the new version of Article 118 should be as follows:

> Article 118
> The executive power in okruhs and oblasts shall be executed by prefects and territorial bodies of central executive authorities.
> The composition of a prefect office is formed by a prefect.
> A prefect shall be appointed and dismissed by the President of Ukraine upon submission of the Cabinet of Ministers of Ukraine.
> The prefect's tenure in the same okruh, oblast or the city of Kyiv and the city of Sevastopol shall not exceed three years.
> A prefect shall be a civil servant.
> When exercising his/her powers, a prefect shall be accountable to and controllable by the President of Ukraine and the Cabinet of Ministers of Ukraine.

26. In the first paragraph, the term "executive power" must be understood as "state executive power" and not the executive power of okruh and oblast councils, which should have executive authorities accountable to them as the Charter requires. It would be against the Charter to entrust prefects, like the current Heads of Local State Administration, with the executive authority of oblast and okruh councils. The future prefects cannot be accountable to the government/president on the one hand and the oblast or the okruh Council on the other without conflicts of interest. This conflict of interest is particularly evident in the fact that the prefect will also be responsible for the supervision of local self-government. Furthermore, in most European countries, the main role of the prefect is to co-ordinate state services subordinated to the government. Therefore, the prefect would be mainly accountable to and supervised by the government, not by the President of the Republic, who normally has no role in ordinary administrative affairs. In France for example, the role of the president is strictly symbolic and exercised in his or her quality of Chair of the Committee of Ministers, but the prefects are subordinated to the prime minister and the Minister of the Interior. This avoids two different "verticals of executive power" that may conflict, control and possibly even paralyse each other, especially in cases where the president and the government are of opposing political affiliations ("cohabitation") [10].

27. The current version of Article 119 defines the main tasks of local state administrations on their territory, including some quite vague descriptions, but also some concrete responsibilities, such as the preparation and implementation of oblast and district budgets, as well as reporting. These responsibilities raise concerns about the financial autonomy of local and regional self-government and Congress Recommendation 348 (2013) had already suggested reinforcing financial autonomy and transferring such competences of state administrations to administrations under the responsibility of elected representatives. The exact wording of Article 119 is as follows:

> Local state administrations on their respective territory ensure:
> 1. the execution of the Constitution and the laws of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine and other bodies of executive power;
> 2. legality and legal order; the observance of laws and freedoms of citizens;
> 3. the implementation of national and regional programmes for socio-economic and cultural development, programmes for environmental protection, and also – in places of compact residence of indigenous peoples and national minorities – programmes for their national and cultural development;
> 4. the preparation and implementation of respective oblast and district budgets;
> 5. the report on the implementation of respective budgets and programmes;
> 6. interaction with bodies of local self-government;
> 7. the realisation of other powers vested by the state and also delegated by the respective councils.

28. According to the draft Law on Amendments to the Constitution, the new version of Article 119 should be as follows:

> Article 119
> A prefect within the respective territory shall:

[10] Ibid, paragraph 43.

> 1) exercise administrative supervision over the observance of the Constitution and laws of Ukraine by local self-government authorities;
> 2) direct and co-ordinate activities of territorial bodies of central executive authorities and exercise administrative supervision over their observance of the Constitution and laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine;
> 3) ensure interaction of territorial bodies of central executive authorities with local self-government authorities upon introduction of martial law, state of emergency or environmental emergency;
> 4) submit to the President of Ukraine a request to suspend an act, adopted by a hromada council, hromada mayor, by okruh or oblast council, which is inconsistent with the Constitution of Ukraine and poses a threat of violation of state sovereignty, territorial integrity, or a threat to national security, and in connection with this temporarily suspend the powers of hromada mayor, hromada council, okruh, oblast council;
> 5) exercise other powers defined by the laws of Ukraine.
> A prefect, on the grounds and in the manner prescribed by law, issues acts that shall be binding within the relevant territory.
> Acts issued by prefects in exercise of their powers referred to in paragraph 1 of part 1 of this Article may be withdrawn by the President of Ukraine, while those issued in exercise of the powers referred to in paragraphs 2 and 3 of part 1 of this Article may be withdrawn by the Cabinet of Ministers of Ukraine.
> Acts issued by prefects in exercise of the powers referred to in paragraph 5 of part 1 of this Article shall be withdrawn by the President of Ukraine and, in the instances prescribed by law shall be withdrawn by the Cabinet of Ministers of Ukraine.

29. The supervision system established by this article seems to concern only the legality of local acts including delegated competences. However, the draft amendments also provide for certain powers of the President with regard to the exercise of supervision. In this context the Council of Europe does not recommend, in principle, giving the president the power to interfere in administrative affairs and to overrule the prefects' decisions stemming from their legality supervision function (as provided by paragraph 5 of this draft article). It excludes from this only the cases of violation of the Constitution with simultaneous violation of national sovereignty, territorial integrity or security (as provided by paragraph 4 of this article).

30. The Council of Europe has also recommended inserting in Article 119 of the constitution the principle of "proportionality" as it appears in Article 8, paragraph 3, of the Charter; moreover, that supervision should be the subject of a specific piece of legislation or of a section in the Law on Local Self-Government. Theoretically, the principle of proportionality could be subsequently stated in the law, but the current draft of Article 119 seems to introduce a disproportionate balance between the power of the state administration and of the local self-authorities, which seems to be incompatible with the spirit of the Charter. The principle of proportionality is one of the most important principles of the Charter and its non-respect would be a clear violation of the Charter. This principle excludes lengthy bureaucratic procedures, systematic supervision of all texts and the politicisation and abuse of supervision authority.[11]

31. Again, aspects of the supervision system are also regulated in the current version of Article 144, which also guarantees the mandatory character of decisions taken by local government bodies throughout their territory:

> Article 144
> Bodies of local self-government, within the limits of authority determined by law, adopt decisions that are mandatory for execution throughout the respective territory.
> Decisions of bodies of local self-government, for reasons of nonconformity with the Constitution or the laws of Ukraine, are suspended by the procedure established by law with a simultaneous appeal to a court.

32. According to the draft Law on Amendments to the Constitution, the new version of Article 144 should be as follows:

> Article 144
> Under the law, councils and mayors of hromadas, executive bodies of hromada councils, okruh and oblast councils, executive committees of okruh and oblast councils adopt decisions that are mandatory for execution in the respective territory.
> A prefect shall suspend acts adopted by local self-government authorities and officials due to their incompliance with the Constitution or the laws of Ukraine, with a parallel legal recourse.
> In the event that an act has been adopted by a council, mayor of a hromada, okruh or oblast council, which is inconsistent with the Constitution of Ukraine and poses a threat of violation of state sovereignty, territorial integrity, or a threat to national security, the President of Ukraine, upon submission from a prefect, shall decree a suspension of the respective act with a concurrent recourse to the Constitutional Court, suspend

11. Ibid.

> the powers of a mayor of a hromada, members of hromada, okruh or oblast council, and appoint a temporary state commissioner. The temporary state commissioner shall direct and manage operation of respective executive bodies of a hromada council, an executive committee of an okruh or oblast council. Legal status of the temporary state commissioner shall be defined by law.
> This decree of the President of Ukraine shall be considered by the Constitutional Court of Ukraine within seven calendar days.
> Where the Constitutional Court has found an act adopted by a mayor of a hromada, hromada, okruh or oblast council to be in conformity with the Constitution of Ukraine, any acts issued by the President of Ukraine under paragraph 3 of this Article shall lose their force.
> Where the Constitutional Court has found the act adopted by a mayor of a hromada, hromada, okruh or oblast council to be inconsistent with the Constitution of Ukraine, the Verkhovna Rada of Ukraine, upon submission from the President of Ukraine, shall terminate early powers of a mayor of a hromada, hromada, okruh or oblast council, and shall call pre-term elections in the manner prescribed by law.

According to the second paragraph, the prefect shall suspend acts of local government bodies for reasons of legality, while reasons of expediency are not mentioned and therefore seem to be excluded. In parallel, the possibility of legal recourse is provided.

33. The other paragraphs of draft Article 144 create a mechanism for suspending and possibly dismissing local and regional authorities. The prefect submits to the President of the Republic acts of local authorities who violate the constitution and, in addition, also threaten national security. The president decrees a suspension of the respective act with concurrent recourse to the Constitutional Court. Moreover, the Head of State suspends the powers of the respective local or regional body and appoints a temporary state commissioner. The intervention of the president in this case seems legitimate as he or she is, as Article 102 of the constitution puts it, "the guarantor of the state sovereignty and territorial integrity of Ukraine, the observance of the Constitution of Ukraine …". In the same vein, the Venice Commission highlighted that such a power of the president is fully justified, *inter alia*, since he or she can intervene "more rapidly and efficiently than the Verkhovna Rada – when self-government bodies overstep their constitutional and legal competences and pose a threat to the sovereignty, territorial integrity and security of state".[12]

34. The provision that a dismissing of the mayor or the council and ordering early elections appears however possible if the Constitutional Court has found any infringement of the Constitution seems worthy of review from the point of view of proportionality. According to the wording, it should be possible to dismiss the mayor or council and order new elections for any act of the mayor or council found unconstitutional by the Constitutional Court, regardless of the seriousness of the violation or whether it is a first or repeated violation of the Constitution. The President shall decide whether to initiate such proceedings; the final decision shall be taken by Parliament. This procedure entails additional risks of politicised decisions. The high value of the direct democratic legitimation of mayors and councils is not sufficiently taken into account by this regulation.

35. The territorial structure of Ukraine is regulated by Articles 132 and 133 of the constitution:

> 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.
>
> Article 133
> The system of the administrative and territorial structure of Ukraine is composed of the Autonomous Republic of Crimea, oblasts, districts, cities, city districts, settlements and villages. Ukraine is composed of the Autonomous Republic of Crimea, Vinnytsia Oblast, Volyn Oblast, Dnipropetrovsk Oblast, Donetsk Oblast, Zhytomyr Oblast, Zakarpattia Oblast, Zaporizhia Oblast, Ivano-Frankivsk Oblast, Kyiv Oblast, Kirovohrad Oblast, Luhansk Oblast, Lviv Oblast, Mykolaiv Oblast, Odesa Oblast, Poltava Oblast, Rivne Oblast, Sumy Oblast, Ternopil Oblast, Kharkiv Oblast, Kherson Oblast, Khmelnytskyi Oblast, Cherkasy Oblast, Chernivtsi Oblast and Chernihiv Oblast, and the Cities of Kyiv and Sevastopol. The Cities of Kyiv and Sevastopol have special status that is determined by the laws of Ukraine.

36. The new version of Article 132 in the draft Law on Amendments to the Constitution is as follows (changes in bold):

12. See Venice Commission, Opinion CDL-AD(2015)028, paragraph 11 and Centre Of Expertise For Good Governance, Preliminary comments on the Draft Law of Ukraine "On Amendments of the Constitution of Ukraine", CEGG/LEX(2020)2, Strasbourg, 20 February 2020, p. 20., paragraphs 45,46.

> Article 132
> The territorial structure of Ukraine shall be based on the principles of unitariness, unity and integrity of the territory of the State, decentralisation of power, subsidiarity and ubiquity of local self-governance, balanced and sustainable socio-economic development of territories, while taking into consideration their historical, economic, ecological, geographic, and demographic characteristics as well as ethnic and cultural traditions.

37. The draft Law on Amendments to the Constitution provides for the introduction of the principle of "unitariness" (Ukrainian: *унітарності*). Ukraine remains, indeed, under the proposed revised constitution, a unitary state, despite having (like many unitary European countries) special arrangements for some areas, either appearing in the constitution (Autonomous Republic of Crimea) or to be set out in further legislation (Kyiv and Sevastopol)[13]. Another change provides for the replacement of the principle of "combination of centralisation and decentralisation in the exercise of state power" by that of "decentralisation of power". This is definitely a positive amendment, since it strengthens the principle of decentralisation of power, usefully replacing the previous, confusing, one[14].

38. The new version of Article 132 in the draft Law on Amendments to the Constitution introduces two very important and powerful principles: subsidiarity and ubiquity of local self-governance (*субсидіарності і повсюдності місцевого самоврядування*). The principle of ubiquity (also sometimes translated as omnipresence – *повсюдності*) means that all the territory of Ukraine will be occupied by local authorities. This represents a stark contrast with the current system, where municipalities only occupy (and sometimes own) the built area; transferring all land to municipalities is a very effective measure of empowering them and has been suggested by the Council of Europe for a long time[15]. The principle of ubiquity is also connected to the principle of subsidiarity since the exercise of public responsibilities close to the citizen should not be restricted within the borders of built areas. Furthermore, regulation and management of a "considerable part of public affairs" by the local authorities and "in the interest of the local population" according to Article 3, paragraph 1, of the Charter is hardly imaginable without responsibility for unbuilt areas surrounding the territory of local authorities.

39. The new version of Article 133 in the draft Law on Amendments to the Constitution is as follows (changes in bold):

> Article 133
> The system of the administrative territorial structure of Ukraine shall include administrative territorial units: hromadas, okruhs, oblasts, the Autonomous Republic of Crimea, the cities of Kyiv and Sevastopol.
> The territory of Ukraine shall be comprised of hromadas. The hromada shall be the primary unit in the system of administrative territorial structure of Ukraine.
> Several adjacent hromadas shall constitute an okruh.
> The procedure for forming and liquidating, establishing and changing boundaries of, naming and renaming hromadas, okruhs, oblasts, as well as the procedure for forming, naming, renaming, and categorising hromadas as villages, settlements or cities shall be prescribed by law.
> The legal status of Kyiv as the capital of Ukraine and the city of Sevastopol in the system of administrative and territorial structure of Ukraine shall be determined by laws of Ukraine.

40. This new (draft) version of Article 133 introduces a long over-due clarification and systematisation. It replaces the previous provision that included a full list of various types of entities, some without real legal existence and of very different levels and natures ("Autonomous Republic of Crimea, oblasts, rayons, cities, rayons in cities, settlements and villages"). It is clear that from now on that there are three levels of sub-national government – hromadas (municipalities), okruhs (sub-regional authorities) and oblasts (regions) – plus the Autonomous Republic of Crimea and the two cities with special status, and all sub-national governments will all be referred to as "administrative territorial units". The fact that the oblasts will no longer be mentioned by name in the constitution seems to open up the possibility for mergers at the oblast level [16].

41. The Constitution of Ukraine includes a special section for local government (Chapter XI: Articles 140-146). The draft Law on Amendments to the Constitution includes proposals for a new version of these articles.

42. The current version of Article 140 is as follows:

13 See Preliminary comments on the Draft Law of Ukraine "On Amendments of the Constitution of Ukraine", CEGG/LEX(2020)2, Centre of expertise for good governance, Strasbourg, 20 February 2020, paragraph 12.
14 Ibid, paragraph 12.
15 Ibid.
16 Ibid, paragraph 13.

> Local self-government is the right of a territorial community – residents of a village or a voluntary association of residents of several villages into one village community, residents of a settlement, and of a city – to independently resolve issues of local character within the limits of the Constitution and the laws of Ukraine. Particular aspects of the exercise of local self-government in the Cities of Kyiv and Sevastopol are determined by special laws of Ukraine.
> Local self-government is exercised by a territorial community by the procedure established by law, both directly and through bodies of local self-government: village, settlement and city councils, and their executive bodies.
> District and oblast councils are bodies of local self-government that represent the common interests of territorial communities of villages, settlements and cities.
> The issue of organisation of the administration of city districts lies within the competence of city councils. Village, settlement and city councils may permit, upon the initiative of residents, the creation of house, street, block and other bodies of popular self-organisation, and to assign them part of their own competence, finances and property.

43. The new version of Article 140 in the draft Law on Amendments to the Constitution is as follows (changes in bold):

> Article 140
> Local self-governance is the right and capacity of a hromada to resolve, either directly or through local self-government authorities and their officials, locally significant issues within the framework of the Constitution and the laws of Ukraine.
> A hromada is a primary entity of local self-governance.
> A hromada shall exercise local self-governance directly through elections, local referendums, local initiatives or in other forms prescribed by law.
> A hromada council and executive bodies of a hromada council shall be local self-government authorities of a hromada.
> A hromada council shall facilitate the activity of public self-organisation bodies established under the law and the hromada charter and, for this purpose, may vest them with funds and property.
> Okruh and oblast councils shall be local self-government authorities that represent and implement common interests, defined by law, of hromadas of the respective okruh or oblast.
> The status of a hromada mayor, deputies of hromada, okruh, and oblast councils, the procedure for formation, reorganisation and liquidation of hromada council's executive bodies, executive committees of okruh and oblast councils, and the scope of their powers shall be defined by law.
> The matter of managing city districts shall be referred to the competence of the respective hromada councils.

44. The new version adds the notion of "capacity" to the definition of local self-government in the first paragraph of Article 140 following the example of Article 3.2 of the Charter. Nevertheless, it refrains from speaking about "the right and the capacity … to regulate and manage" in favour of the weaker and vaguer formulation "to address/resolve". In the second paragraph of this version, the hromada is recognised as the "primary entity of local self-governance". Correspondingly, the sixth paragraph maintains a distinction between the first and the other two levels of sub-national government. It states that the okruh and oblast councils represent the common interests of the component hromadas, instead of referring to the interests of the okruh and oblast population, respectively.

45. This distinction between the first and the upper tiers of local self-government is also made by the current version of Article 140 (see above: "they represent the common interests of territorial communities"), where it is said that district and oblast councils are bodies that represent the common interests of territorial communities of villages, settlements and cities, although (in the current version of the following Article 141, see below) it is provided that also these councils are directly elected by the okruh/oblast residents. This direct democratic legitimisation of the okruh/oblast councils through direct election should mean that these "resolve" the corresponding "issues of local character" under their own responsibility and in the interests of the local okruh or oblast population, in line with the spirit of Article 3, paragraph 1, of the Charter. After all, the Charter applies to all categories of local or regional authorities of Ukraine, since no declaration has been made to specify or to exclude categories from the scope of the Charter, as is possible according to Article 13 of the Charter.

46. The current version of Article 141 is as follows:

> Article 141
> A village, settlement, city, district or oblast council is composed of deputies elected by residents of a village, settlement, city, district or oblast on the basis of universal, equal and direct suffrage, by secret ballot.
> The term of authority of a village, settlement, city, district or oblast council to which deputies are elected in regular elections is five years.

> Termination of authority of a village, settlement, city, district or oblast council shall lead to termination of authority of deputies of the respective council.
> Territorial communities elect on the basis of universal, equal and direct suffrage, by secret ballot, the head of village, settlement or city, respectively, who leads the executive body of the council and presides at its meetings.
> The term of authority of the head of village, settlement or city elected in regular elections is five years. Regular elections of a village, settlement, city, district, oblast council, the heads of village, settlement or city take place on the last Sunday of October of the fifth year of the authority of the respective council or the respective head elected on regular elections.
> 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 chairman of a district council and the chairman of an oblast council are elected by the respective council and lead the executive staff of the council.

The current version of Article 141 provides for the direct election by universal suffrage and secret ballot of councils at all tiers of local government. Their term of office is five years. Direct election of heads is only provided for the first tier of local self-government, while the constitution provides that the chairs of district and oblast councils are elected by them and lead "the executive staff".

47. The proposed amendments of Article 141 in the draft Law on Amendments to the Constitution are as follows:

> Article 141
> The right to vote in the elections of mayors of the hromada, deputies of the hromada, okruh, and oblast councils shall be held by those citizens of Ukraine who reside permanently within the respective hromada, have reached the age of eighteen by the date of the election, and have not been declared incompetent by a court.
> …
> The procedure for electing deputies of okruh and oblast councils shall provide for representation of hromadas within the respective okruh or oblast and shall be prescribed by law.

48. In the proposed amended version of Article 141 it is not clear how the procedure for electing deputies of okruh and oblast councils can provide for the representation of hromadas if they are to be elected directly by the citizens of the hromada. It would be better to provide that these councils are directly elected by the citizens residing in the respective territory, just as it is the case in the current version of Article 141 (see above)[17]. This is also in line with Congress Recommendation 369 (2015)[18] and 419 (2018).[19] If the formulation only means that the electoral rules must take the municipal borders into account, this would not be problematic, as long as the principle of equal suffrage is respected. But, again, if this formulation means that the members of the okruh and oblast councils are to be elected by hromada bodies, and not directly by the citizens, this would be a system that is not in line with Article 3, paragraph 2, of the Charter (see also above, the comments for Article 140).

49. The current version of Article 142 is as follows:

> The material and financial basis for local self-government is movable and immovable property, revenues of local budgets, other funds, land, natural resources owned by territorial communities of villages, settlements, cities, city districts, and also objects of their common property that are managed by district and oblast councils.
> On the basis of agreement, territorial communities of villages, settlements and cities may join objects of communal property as well as budget funds, to implement joint projects or to jointly finance (maintain) communal enterprises, organisations and establishments, and create appropriate bodies and services for this purpose.
> 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.

17 See Preliminary comments on the Draft Law of Ukraine "On Amendments of the Constitution of Ukraine", CEGG/LEX(2020)2, Centre of expertise for good governance, Strasbourg, 20 February 2020, paragraph 62.
18. See Recommendation 369 (2015) on Electoral lists and voters residing de facto abroad adopted by the Congress of Local and Regional Authorities on 25 March 2015.
19. See Recommendation 419(2018) on Voting rights at local level as an element of successful long-term integration of migrants and IDPs in Europe's municipalities and regions adopted by the Congress of Local and Regional Authorities on 6 November 2018.

Article 142 includes a broad description of revenue and assets of local self-government, opens the way to intermunicipal co-operation and stipulates state financial support for local budgets and compensation for additional costs caused by state. It is not clear, however, whether okruhs and oblasts are included in the notion of “local self-government”.

50. The new version of Article 142 in the draft Law on Amendments to the Constitution is as follows (changes in bold):

> Article 142
> The material and financial basis for local self-governance is:
> 1) land, movable and immovable property, natural resources, and other hromada-owned communal facilities;
> 2) local taxes and dues, a portion of national taxes and other revenues of local budgets.
> The state shall ensure proportionality between financial resources and scope of powers held by local self-government authorities, as defined by the Constitution and laws of Ukraine.
> Any changes to competence of a local self-government authority shall be effected concurrently with the respective changes to the allocation of financial resources.
> The state shall compensate local self-governments for expenses incurred as a result of decisions made by state authorities.
> Hromadas may pool, on a contractual basis, hromada-owned facilities and budgetary funds to implement joint projects or to provide joint funding for (maintenance of) communal enterprises, institutions and organisations, and to establish respective bodies or services for this purpose.

51. Many elements of the proposed amendment seem to be broadly in line with Article 9 of the Charter. There are, however, some aspects that should be clarified. For instance, Article 9, paragraph 2, of the Charter mentions “adequate resources of their own”, while the word “proportionality” could be interpreted in a way that only partly (“proportionally”) covers the needs of local self-governments. On the other hand, it is obvious that the proposed amendment includes more concrete provisions about the resources of local government revenue, since it refers to “local taxes and dues”. That means that at least some of the resources would be derived from taxes and charges of which they have the power to determine the rate, in line with Article 9, paragraphs 1 and 3, of the Charter[20].

52. Some other parts of Article 9 of the Charter are not, however, reflected in the current draft. They concern the need for an equalisation system in order to allow for the protection of the financially weaker municipalities (Article 9, paragraph 5) and, furthermore, the consultation of local authorities on the allocation of redistributed resources (paragraph 6), the preference for non-earmarked grants (paragraph 7) and the access to the national capital market for capital investments (paragraph 8).

53. In its comments to the draft Law on Amendments to the Constitution, the Council of Europe has made clear that not all aforementioned principles should be reflected in the constitution. It is therefore recommended that financial transfers are added to the legitimate sources of funding of local authorities and, in addition, to mention an equalisation system that aims to compensate for some of the objective differences between the fiscal bases and spending needs of various local authorities.[21]

54. The current version of Article 143 is as follows:

> Article 143
> Territorial communities of a village, settlement and city, directly or through the bodies of local self-government established by them, manage the property that is in communal ownership; approve programmes of socio-economic and cultural development, and control their implementation; approve budgets of the respective administrative and territorial units, and control their implementation; establish local taxes and levies in accordance with the law; ensure the holding of local referendums and the implementation of their results; establish, reorganise and liquidate communal enterprises, organisations and institutions, and also exercise control over their activity; resolve other issues of local importance ascribed to their competence by law.
> Oblast and district councils approve programmes for socio-economic and cultural development of the respective oblasts and districts, and control their implementation; approve district and oblast budgets that are formed from the funds of the state budget for their appropriate distribution among territorial communities or for the implementation of joint projects, and from the funds drawn on the basis of agreement from local budgets for the realisation of joint socio-economic and cultural programmes, and control their implementation; resolve other issues ascribed to their competence by law.

20 Centre of Expertise for Good Governance, Preliminary comments on the Draft Law of Ukraine “On Amendments of the Constitution of Ukraine”, CEGG/LEX(2020)2, Strasbourg, 20 February 2020, paragraph 63.
21. Ibid, paragraph 62.

> Certain powers of bodies of executive power may be assigned by law to bodies of local self-government. The state finances the exercise of these powers from the State Budget of Ukraine in full or through the allocation of certain national taxes to the local budget, by the procedure established by law, transfers the relevant objects of state property to bodies of local self-government.
> Bodies of local self-government, on issues of their exercise of powers of bodies of executive power, are under the control of the respective bodies of executive power.

55. Article 143 mentions some important activities of local self-government and provides a constitutional basis for the power of first-tier local self-governments to establish local taxes and levies in accordance with the law. It also stipulates that the state finances the exercise of tasks of executive power that are assigned by law to bodies of local self-government. The latter are in such cases subject to control of the respective bodies of executive power. The constitution uses the term "control" instead of "supervision" and therefore seems to include expediency control.

56. The proposed amendments to Article 143 in the draft Law on Amendments to the Constitution are as follows (changes in bold):

> Article 143
> Under the law, a hromada, either directly or through a hromada's local self-government authorities and their officials, shall:
> 1) manage the hromada-owned property;
> 2) adopt the budget of the respective hromada and monitor its implementation;
> 3) approve the programmes of socio-economic and cultural development and monitor their implementation;
> 4) adopt decisions in respect of local taxes and dues;
> 5) ensure the implementation of the outcomes of local referendums;
> 6) establish, reorganise and liquidate communal enterprises, organisations and institutions, and shall also monitor their operation;
> 7) address other matters of local significance referred by law to its competence.
> The competence of oblast and okruh councils shall be determined by the Constitution of Ukraine and the law.

57. While there is an indicative enumeration, in this amendment of responsibilities assigned to hromadas there is no description of okruh or oblast competence. It seems that discussions concerning the future of the regional and sub-regional level have not been finalised while the constitutional reform is urgently needed in order to accomplish the main part of the decentralisation reform, which concerns the transfer of new competences and resources to the local level (to hromadas). This situation in not unique; the Polish Constitution, adopted in a similar situation, does not even mention the upper tiers (voivodeship and powiat), but gives to the parliament the right to create other levels of sub-national government. It seems therefore acceptable to send the issue of the competences of upper tiers to the ordinary law.[22]

58. In the last two articles of Chapter XI of the constitution (Article 144 has already been analysed in connection with the system of supervision and the institution of the prefect), judicial protection of local self-government is provided (Article 145: "The rights of local self-government are protected by judicial procedure") and reference to the law for other issues ("..the organisation of local self-government, the formation, operation and responsibility of the bodies of local self-government..": Article 146) is made.

59. Besides the constitution, there are a considerable number of laws regulating different aspects of local and regional governance as well as several pieces of sectoral legislation that deal with local and regional authorities. Therefore, the legal framework seems quite fragmentated and systematisation and codification would certainly facilitate its proper implementation and offer the necessary overview to legislators. Among these laws, the most important are:

- "On Local Self-Government" (No. 280/1997)
- "On local public/state administration" (No. 586-IXV/1999)
- "On the Status of Local Councillors" (No. 40/ 2002)
- "Budget Code of Ukraine" (No. 2456-VI/2010)
- "Tax Code of Ukraine" (No. 2755-VI/2010)
- "On Voluntary Amalgamation of Territorial Communities" (No. 157-VIII/2014)
- "On Cooperation of Local Communities" (No. 1508-VII/2014)

22. Centre of expertise for good governance, Preliminary comments on the Draft Law of Ukraine "On Amendments of the Constitution of Ukraine", CEGG/LEX(2020)2, Strasbourg, 20 February 2020, p. 20, paragraph 69.

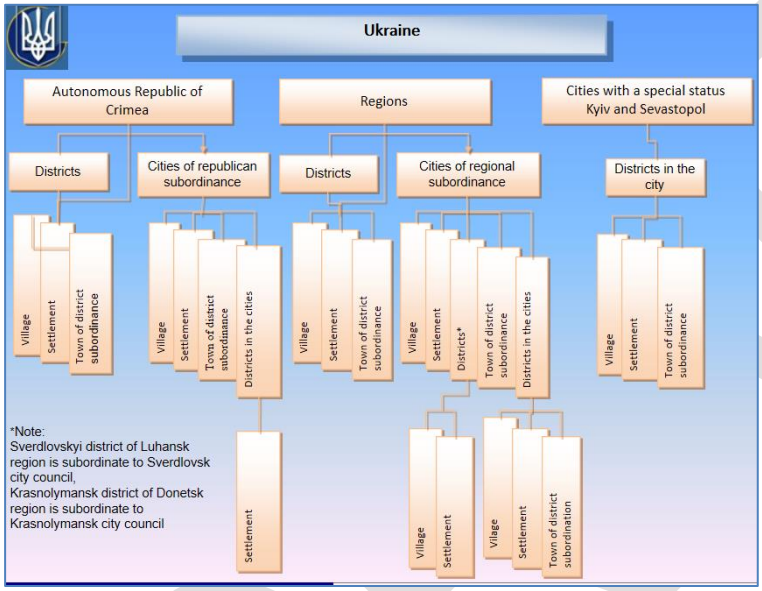
Some other important laws are: “On Service in Local Government Bodies”; “On Citizens’ Self-Organisation Bodies”; “On Local Government Associations”; “On Land Code of Ukraine; “On general scheme of planning of the territory”[23].

The Law on Local Self-Government is the basic law regulating local self-government in Ukraine. The Ministry of Communities and Territories Development informed the rapporteurs that it had prepared the revised versions of this law as well as of the Law on local state administration. Their adoption is expected in November 2020, in accordance with the new calendar plan of the reform. The draft laws have given rise to different expert assessments and the Congress follows closely the issue.

### *The local government system*

*The structure*

60. As a unitary state, Ukraine has a public administration system that is divided among the central government and three tiers of sub-national government.




Source: snapshot from the PowerPoint presentation by Anatoliy Tkachuk on Decentralization in Ukraine, 2014-15[24], Civil-Society-Institute[25](Ukraine)

61. The highest (third) tier of sub-national government is the regional (oblast) level. It comprises 24 regions (oblasts) along with the Autonomous Republic of Crimea, and the two cities of Kyiv and Sevastopol (that have special legal status). Up to July 2020, the second tier consisted of 490 districts (rayons) and 185 cities of republican (ARC) and regional significance (at the oblast subordination level). Lastly, the first tier, which is also the most heterogeneous, is made up of cities and districts within cities, settlements and villages. Prior to the start of the decentralisation and self-government reforms in 2014, there were approximately 458 cities, 118 districts within cities, 886 settlements and 28 540 villages.[26]

62. As of July 2020, the basic tier of local self-government is represented by 1470 territorial communities, which had been established through mergers under the administrative-territorial reform.

63. On 17 July 2020, the Verkhovna Rada of Ukraine reduced the number of rayons in Ukraine. Instead of 490 former rayons there will be 136 rayons. Their territory will also cover the territories of 187 cities of oblast subordination/significance.

23. http://2.auc.org.ua/en/page/legislative-framework.
24. https://slideplayer.com/slide/9335116/.
25. www.csi.org.ua/.
26. Congress of Local and Regional Authorities of the Council of Europe/Francesco Merloni (ed.), Regionalisation trends in European countries 2007-2015 (2016), Council of Europe, Strasbourg, p. 203.

64. The next local elections in Ukraine scheduled for 25 October 2020 will be held on this new administrative-territorial basis.

65. Due to the illegal annexation of Crimea by the Russian Federation and its military intervention in the east of Ukraine, some parts of the Ukrainian territory are currently occupied and not under the control of the Ukrainian government. Those include the territory of the Autonomous Republic of Crimea and the city of Sevastopol. In addition, on 17 March 2015, the Verkhovna Rada recognised certain rayons of the Donetsk and Luhansk oblasts as occupied territories, as further embodied in the Law of Ukraine "On the peculiarities of State policy on ensuring Ukraine's State sovereignty over temporarily occupied territories in Donetsk and Luhansk regions" adopted on 18 January 2018. The legal status of those territories is regulated by the Laws of Ukraine "On Assuring the Rights and Freedoms of Citizens and the Legal Status of the Temporarily Occupied Territory of Ukraine", "On the Particular Aspects of the State Policy on Assuring the Sovereignty of Ukraine on the Temporarily Occupied Territory of the Donetsk and Luhansk oblasts" and "On the peculiarities of State policy on ensuring Ukraine's State sovereignty over temporarily occupied territories in Donetsk and Luhansk regions".

66. Sub-national self-government in Ukraine is composed of:
- Regional/oblast and district/rayon councils (rady);
- city, town, village councils and their executive bodies.

Deputies of the settlement, village, town, city, district and regional councils are elected by local residents through general, equal and direct voting, by secret ballot. Chairmen of the Regional and District Councils are elected by the respective council's members and preside over the executive staff of their councils. Cities of oblast subordination have their own executive bodies.

67. Regions (oblasts) and districts (rayons) have a similar administrative structure. Deliberative powers are exercised by an elected council. But they do not have their own executive bodies. For oblasts and rayons, the Law "On Local State Administrations" of 9 April 1999, No. 586-XIV, stipulates that regional and district state administrations (*oblasni, rayonni dergavni administracii*) represent the central executive power, but they report to and are controlled by councils within the scope of the powers delegated to them by respective rayon or oblast councils.

68. Heads of the regional and district/rayon state administrations are appointed and dismissed by the President of Ukraine upon proposal of the Cabinet of Ministers of Ukraine; their tenure remains valid while the current president remains in office. In the exercise of their powers they are accountable to the President of Ukraine and the Cabinet of Ministers of Ukraine. They report to and are controlled by executive government bodies of higher levels.

69. The existence of two different systems of sub-national government and executive power down to the rayon level, territorial self-governments on the one hand and state administrations on the other, is a source of conflict because of unclear delimitation of competences between them.

70. During the consultation procedure, the Ministry of Communities and Territories Development of Ukraine informed the rapporteurs that the revised draft laws of Ukraine "On local self-government in Ukraine" and "On local state administrations" prepared by the Ministry would clearly delineate the powers of local self-government bodies at the basic, sub-regional and regional levels and the powers of executive authorities. The drafts would also define the general principles of demarcation of powers of the state and local self-government, conditions and principles of vesting local self-government bodies with powers of the state and the guarantees of public stability when vesting local self-government bodies with the state powers.

*Local government reform*

71. In April 2014, the post-Euromaidan national government adopted a Concept of the Reform of Local Self-Government and Territorial Organization of the Government of Ukraine. Mergers have been an important element of the decentralisation reform that started with the adoption of the Concept of the Reform of Local Government and Territorial Organization of Authority[27] and went forward with the Law on Cooperation of Territorial Communities,[28] the Law on Voluntary Amalgamation of Territorial Communities[29] and financial

27. https://zakon.rada.gov.ua/laws/show/333-2014-p
28. https://zakon.rada.gov.ua/laws/show/1508-18.
29. https://zakon.rada.gov.ua/laws/show/157-19?lang=en.

decentralisation amendments to the budget and tax codes that considerably increased funding to local governments.

72. In 2015, the OECD reported that intermunicipal co-operation was still in its infancy but is being considerably promoted as it was supported by the 2014 Law No. 1508-VII on Co-operation of Territorial Communities. This law can help improve the efficiency of public-service delivery when municipalities are too small, and/or have overlapping or redundant functions.[30] It established the mechanism of dealing with common problems faced by communities: waste management and recycling, development of joint infrastructure, etc.). Today, more than 325 co-operation agreements are already being implemented and 925 communities have taken advantage of that mechanism.[31]

73. The government also launched a reform to merge local governments and strengthen the decentralisation process, giving additional power and resources to local self-government authorities. Important steps have been taken towards achieving municipal mergers and greater fiscal, administrative and political decentralisation, complemented by the State Strategy for Regional Development 2015-2020. The voluntary creation of self-sustaining "amalgamated territorial communities" (ATCs, or hromadas in Ukrainian) was supported by developmental planning at the local and regional levels, as well as by comprehensive technical and financial support from Western donors.

74. After recognition by the central government, ATCs receive considerable rights in respect of tax collection and public policy. Substantial fiscal decentralisation[32] was already under way in late 2014 when parliament amended the budget and tax codes. The central government also provides ATCs with funding to build new institutions and implement local developmental projects. The ATCs receive subsidies from the central government – including, until 2020, funds for establishing their newly merged institutional and social infrastructure.

75. The reform is accompanied by parallel "sectoral decentralisation", above all in public health and education. Special "equalisation" grants are available for correcting disparities in local development between communities, however they do not seem sustainable enough. Block grants for health care (until July 2018) and education have further improved the financial capacities of the ATCs, allowing them to take on more responsibility for public services. The ATCs are, for instance, responsible for managing primary and secondary education in their territories. This is in contrast to the situation in non-amalgamated communities, where self-government remains weak and where the local bureaucracy is still dependent on guidance from centrally appointed regional and upper sub-regional executives – i.e. the heads of state administrations at the oblast and rayon levels.

76. ATCs acquired powers and resources available to cities of oblast subordination, including 60% of personal income tax revenues allocated to ATC local budgets for the exercise of their authority. In addition, tax revenues that remain in full in the local budget include the single tax, the corporate tax on community-owned enterprises and financial institutions, and the property tax (real estate, land, transport). Amalgamated communities maintain direct interbudgetary relationships with the national budget (prior to the reform, direct relationships were only maintained by oblast and rayon budgets and budgets of cities of oblast subordination) and they receive respective transfers (grants, subventions for education, health care and the development of community infrastructure, etc.) for the exercise of powers delegated by the state. Local budgets' own revenues increased from UAH 68.6 bn (2 bn euros) in 2014 to UAH 267 bn (7,85 bn euros) in 2018.

77. Apart from expanding financial capabilities, decentralisation reform provided amalgamated territorial communities with other tools for boosting economic development, such as borrowing on the foreign markets, independently selecting institutions to keep local budget funds earmarked for development and their own revenues from publicly funded institutions. According to the government, local authorities have become interested in enhancing the investment appeal of their territories for the community's benefit because taxes paid here will be used to improve the locals' quality of life.[33]

78. On 16 April 2020, the Verkhovna Rada of Ukraine adopted Law of Ukraine No. 562-IX which empowered the Cabinet of Ministers of Ukraine to approve the territories of territorial communities based on what is called the perspective plans for the establishment of amalgamated territorial communities (*hromadas*) and their administrative centres. On 12 June 2020, the Cabinet of Ministers endorsed the directive to approve the

30. www.oecd-ilibrary.org/sites/9789264301436-7-en/index.html?itemId=/content/component/9789264301436-7-en&mimeType=text/html.
31. https://decentralization.gov.ua/en/about.
32. "Ukraine's Decentralization Reforms Since 2014. Initial Achievements and Future Challenges", Valentyna Romanova and Andreas Umland, September 2019, research paper, Ukraine forum at www.chathamhouse.org/sites/default/files/2019-09-24-UkraineDecentralization.pdf
33. https://decentralization.gov.ua/en/mainmonitoring#main_info.

territories of 1,470 territorial communities and their administrative centres including in the occupied territories of Donetsk and Luhansk oblasts, but excluding the Autonomous Republic of Crimea (ARC). Prior to the reform, Ukraine had 11,250 territorial communities.

79. The process of amalgamation was thus finalised with the creation of 1470 territorial communities which will serve as the basis for the election to local government bodies of basic level, such as village, town and city councils and the relevant village, town and city mayors during the local elections scheduled on 25 October 2020.

*Competences*[34]

80. The tasks and responsibilities of sub-national self-government are broadly described in Article 143 of the Constitution of Ukraine, and detailed in a series of laws, including "On Local Self-Government in Ukraine" from 21 May 1997, No. 280/97-V (Chapter 3, Articles 27-41), and "On the capital of Ukraine – Hero City of Kyiv", as well as in the Budget and Tax Code and in sectoral legislation (the Land Code, the Forest Code and the Water Code, for example).[35]

81. In practical terms, sub-national self-governments provide most of their services in the sectors of education, public health, housing and public utilities. They are in charge of running schools and hospitals; providing social protection, including social benefits; constructing and maintaining local roads and housing; providing municipal utilities (water and sanitation, waste collection, heating, etc.); and local transportation, as well as developing cultural and leisure facilities and activities.[36] According to the legal framework, municipal authorities can decide on their policies independently, however, in practice the legal framework is often very narrow, and the nature of state funding enables the state to exert considerable influence on the performance of its tasks.

82. The Constitution of Ukraine (Article 143) and the Law "On Local Self-Government" (Articles 26-41 for local councils) determine that local governments, *inter alia*:

- approve programmes of socio-economic and cultural development and supervise their implementation;
- approve budgets of the respective administrative units and oversee their implementation;
- manage the property that is in communal ownership;
- establish local taxes and fees in accordance with the law; determination of the land tax rate and of the fees for natural resources;
- manage housing and communal services, trade services, transport and communications;
- manage waste collection and utilisation;
- organise markets;
- draft and approve local urban planning programmes and general development plans;
- supervise building and construction;
- manage education, health, culture and sport; provide transportation for schoolchildren;
- provide social protection' services;
- establish, reorganise and liquidate communal enterprises, organisations and institutions, as well as monitor their activities;
- resolve other issues of local importance ascribed to their jurisdiction.

83. District and regional councils approve the programmes of socio-economic and cultural development and control their implementation and approve (but not compile) district and regional budgets.
According to Article 119, paragraph 3, of the constitution and the "Law of Ukraine on Local State Administrations", their main competences include:

- the implementation of national and regional programmes for socio-economic and cultural development, and programmes for environmental protection;
- the drafting and implementation of the local budgets, the creation of programmes for socio-economic development and allocation of the necessary expenditures;
- property management and provision of social housing;
- the provision of social protection and employment;
- measures for catastrophes and natural disasters relief;
- privatisation and promotion of entrepreneurship;
- protection of consumer rights;
- preservation of monuments;

34. Based on the Local Finance Benchmarking in Ukraine (chapter II, Functions of local self-government), Council of Europe, 2015.
35. www.oecd-ilibrary.org/sites/9789264301436-7-en/index.html?itemId=/content/component/9789264301436-7-en&mimeType=text/html
36 Ibid.

- the regulation of science, education, culture, health, physical education and sports, family, women, youth and minors;
- the management of land use, natural resources and environmental protection;
- organising the land register and resolving land ownership disputes.

84. The local state administrations in their respective territories are also in charge of execution of the constitution and laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine and other executive government bodies; law and public order interaction with local governments; and implementation of other powers granted by the state and delegated by respective councils.[37]
The Constitution of Ukraine entitles central executive authorities to delegate functions to local councils. Delegated tasks cover administrative, financial and personnel management areas (in total, in 2015, 74 positions according the law),[38] including:

- enforcing obligations regarding payments to local budgets for businesses and organisations regardless of ownership;
- monitoring of compliance with prices and tariffs;
- promotion of investment activity in the territory;
- promotion of recruitment of citizens for military service;
- organisation and control of border and coastal trade;
- enforcement of land and environmental regulations.

*Finance*

85. In 2015, the OECD gave the following evaluation of the financial situation of sub-national authorities in Ukraine.[39] On paper, basic fiscal indicators suggest a relatively decentralised country. Ukrainian sub-national governments represented one third of public expenditure in 2015, in line with the EU-28 average and just seven points below the OECD average of 40%. Ukraine compares with the Netherlands, Italy, Poland and Iceland, where sub-national expenditure accounts for between 11% and 16% of gross domestic product (GDP) and between 27% and 33% of public expenditure. In reality, as the OECD then noted, closer analysis shows that Ukraine remains a centralised country. Fiscal indicators are somewhat misleading and should be interpreted with caution. Oblast and rayon accounts are not fully "decentralised" and most local government accounts cannot be properly identified. The OECD stressed that the creation of amalgamated territorial communities (ATCs), in the framework of the current administrative territorial reform, is fundamentally changing the situation. The ATCs now have independent budgets, made of tax, grants and non-tax revenues, and have direct fiscal relations with the central government via the oblast administrations, although they can continue to receive subsidies from the rayon.

86. Local taxes and fees are established through decisions of village, town and city councils, according to the list and within the size limits of rates prescribed by the Tax Code of Ukraine, and are mandatory for payment on the territory of the municipalities. In sum, the system of local taxes and fees comprises four main local taxes: the single tax (also called the unified tax), the property tax, the parking fee and the tourist tax. Setting of local taxes and fees not provided for by the Tax Code is prohibited. Aside from setting local taxes and fees, local government may not influence the taxation system.[40]

87. According to the OECD in 2015, sub-national government tax revenues were low and did not result from their exercise of taxing power. In 2015, sub-national tax revenue in Ukraine amounted to 4.5% of GDP, below the OECD and EU-28 averages of 7.0% and 6.2%, respectively. Sub-national tax revenue amounted to 18% of total tax revenue in 2015, compared to 38% in 2001 – well below the OECD average (31%) and the EU-28 average (23%). Approximately 67% of sub-national government tax revenue came from the PIT (personal income tax). At the same time, according to the OECD, in 2015, the PIT represented around 11% of central government tax revenue.

88. The reforms introduced in 2014 and that became effective in January 2015 affected shared taxes and own-source taxes, especially with respect to the PIT, the CPT (corporate property tax), the excise tax on retail sales of excisable goods, environmental taxes and rents for the use of natural resources. Tax-sharing arrangements

37. "Local Finance Benchmarking: a Shared Tool for Improved Financial Management", Council of Europe, 2015.
38. Ibid.
39. OECD Multi-level Governance Studies, Maintaining the Momentum of Decentralisation in Ukraine, accessed at https://www.oecd.org/countries/ukraine/maintaining-the-momentum-of-decentralisation-in-ukraine-9789264301436-en.htm
40. "Local Finance Benchmarking: a Shared Tool for Improved Financial Management", Council of Europe, 2015.

were modified between the central government and sub-national governments and across sub-national jurisdictions.

89. Shared taxes now represent a lower share of total sub-national government tax revenue. On the other hand, some minor taxes were abolished in January 2015 and new local taxes were introduced by the Tax Code. In addition, the local government taxing power on local taxes and fees was enlarged, as they now have greater freedom to set rates and establish exemptions. In 2015, Ukraine reformed its property tax (Article 265 of the Tax Code of Ukraine). Since January 2015, the corporate profit tax is shared, with oblasts, ARCs and Kyiv receiving 10% of CPT receipts. The OECD assessed that a renewed system of local taxes and fees provides local authorities with an increased taxing power, and that non-tax revenues are quite constrained but are increasing.

90. In accordance with Article 2 of the Budget Code of Ukraine, the interbudget transfers mean funds donated and permanently transferred from one budget to another. Chapter 16 of the Budget Code of Ukraine regulates the relations on the formation and distribution of interbudget transfers. The State Budget of Ukraine may provide the following kinds of transfers to local budgets: basic subsidy and additional grants.

91. According to a Council of Europe study,[41] the intra-budgetary transfers constitute a significant part of the local finance. This analysis corroborates with the conclusions of the OECD, which in 2015 noted that the funding system was dominated by central government transfers.[42] Sixty per cent of sub-national resources came in the form of transfers from the central government. This is significantly more than the OECD (38%) and the EU-28 (45%) averages. Local governments in rural areas rely most heavily on central government transfers, which represent more than 75% of their revenues  In cities, by contrast, taxes generated 45% of revenues in 2015. In Kyiv, tax revenues represented almost 50% of the city's total revenues in 2015.

92. The intergovernmental system of grants was substantially reformed in 2014-15.[43] The Budget Code of Ukraine was amended on 28 December 2014. This was associated with the entry into force of the Law of Ukraine No. 157-VIII "On voluntary association of communities", dated 5 February 2015, as well as of the Law of Ukraine No. 176-VIII "On Amendments to the Budget Code of Ukraine and some other legislative acts of Ukraine", dated 10 February 2015. Prior to 2015, the grant system was comprised of one equalisation grant and one social grant, together representing 90% of all transfers. This system had several important drawbacks.

93. According to the IMF,[44] the reform resulted in an overall improvement of sub-national government finances. Compared with 2014, sub-national governments' own revenues increased, while current expenditure declined. This created additional space for capital expenditure, which almost doubled as a percentage of GDP, from 2014 to 2016. Overall, sub-national governments recorded a combined surplus of 1.0 and 0.7 per cent of GDP in 2015 and 2016, respectively. Despite these significant reforms and positive fiscal outcomes, Ukraine's sub-national finance system is still facing important challenges.

94. After the 2014 reform, there are still two main categories of grants, but their composition is quite different than before. There is the equalisation grant and several formula-based central government transfers earmarked to fund sectoral expenditures, particularly in the education and health sectors. Capital grants and subsidies have also been established or reformed to support investment projects aimed at fostering regional and local development and improving infrastructure. The new system of grants aims at ensuring more permanent and stable funding for key responsibilities, as well as enhancing the predictability and transparency behind the allocation of transfers through clearer allocation of rules. One major objective is to improve efficiency in the use of the resources.[45]

95. More specifically, the 2014 amendments to the Budget Code introduced an equalisation mechanism for sub-national government revenues rather than expenditures, basing it on two taxes: the personal income tax (PIT) (for oblasts, rayons, regional towns and communities) and the corporate profit tax (CPT, only for regional budgets). The mechanism has simplified the calculation formula and now takes revenue performance into consideration when calculating the equalisation grants.[46]

41. Ibid.
42. www.oecd-ilibrary.org/sites/9789264301436-7-en/index.html?itemId=/content/component/9789264301436-7-en&mimeType=text/html
43. Ibid.
44. Ukraine : Technical Assistance Report-Fiscal Decentralization and Legal Framework for Fiscal Risk Management and Medium-term Budgeting, https://www.imf.org/en/Publications/CR/Issues/2019/11/22/Ukraine-Technical-Assistance-Report-Fiscal-Decentralization-and-Legal-Framework-for-Fiscal-48833
45. www.oecd-ilibrary.org/sites/9789264301436-7-en/index.html?itemId=/content/component/9789264301436-7-en&mimeType=text/html.
46. Ibid.

96. The equalisation system's main elements are basic and reverse grants. The basic grant is a transfer from the national budget to the local budgets. The reverse grant is composed of funds transferred from the local budgets to the national budget to ensure horizontal equity. The equalisation mechanism is determined by the tax capacity index, which is the ratio between the tax capacity per person of a local budget and the average tax capacity per person of the same level budgets. This tax capacity index determines which local government will receive a basic grant, which will pay the reverse grant and which will be unaffected by the mechanism. The tax capacity index is also used for the calculation of the basic and reverse grants.

97. The OECD noted that, since 2015, there seems to have been movement towards more decentralisation in spending as the decentralisation of new responsibilities and charges progresses, although this remains to be confirmed. In the scientific literature,[47] it has been pointed out that the amendment of budget and tax codes advanced fiscal decentralisation. The share of local budgets in the national budget grew from 42 per cent in 2014 to almost 50 per cent in 2018, i.e. similar to the level in some decentralised EU member states.

98. In 2014, the total revenues generated for local budgets amounted to UAH 68.6 billion (approximately US $4.2 billion); by 2018, this had risen to more than UAH 200 billion (approximately US $7.2 billion) – an increase that, even after factoring in the simultaneous devaluation and inflation of the hryvnia, was impressive. The share of locally raised taxes and revenues in the income of municipal budgets increased from 0.7 per cent in 2014 to 26.1 per cent in 2018.

99. The new ATCs have become increasingly dependent on local income, and less on financial resources provided by the centre. Growth in municipal revenue has led to a corresponding increase in the share of national public expenditure accounted for by ATCs' spending. At the same time, the central government keeps providing direct financial support to newly established ATCs, investing in local and regional development projects for which ATCs can apply for funding.[48]

100. In December 2018, the National Institute for Strategic Studies, a Kyiv governmental think tank, reported[49] that through the local budgets of Ukraine almost 15 per cent of its GDP is redistributed. In 2018, the share of properly endogenous incomes of local budgets accounted (as a sum) for 7.1 per cent of GDP (in 2014, it had been at 5.1 per cent), and the properly endogenous incomes of local budgets rose from UAH 68.6 billion in 2015 to UAH 189.4 billion (in 2018). The share of local budgets (including transfers from the centre) within the overall budget of Ukraine rose from 45.6 per cent in 2015 to 51.5 per cent in 2018.

101. To provide for better financial potential, the Ukrainian law allows local borrowing. Local borrowing is shown as a part of revenues in local budgets and borrowing implementation is a part of the local debt management process. In order to ensure the compliance with the limit values of the local debt and local guarantees, the Ministry of Finance of Ukraine keeps the Register of local borrowings and local guarantees. The amount and terms of local borrowing implementation and local guarantees provision are agreed with the Ministry of Finance of Ukraine.

102. According to the OECD, local government borrowing is underdeveloped in Ukraine. In 2016, it accounted for 0.5% of GDP and 0.6% of public debt. Moreover, sub-national debt has decreased regularly since 2007, both as a share of GDP and in relation to public debt. Compared with other OECD countries, Ukraine has a very low level of sub-national debt, close to that of Chile (where there is no official local debt), Greece, Hungary, Ireland and Slovenia. While still strict, the 2014-15 reform loosened the regulatory framework for sub-national borrowing. It offered a simplified procedure for local government borrowing and guarantees based on the principle of "tacit consent".

103. The Budget Code provides a legal framework for the local government budget system. Local budgets are comprised of two parts, the General Fund and the Special Fund. The General Fund is formed by the personal income tax, the property tax, the single tax (since January 2015), the corporate profit tax, some non-tax receipts and operating transfers from government. It is allocated for operating expenditure (salaries, maintenance, interest, etc.). The Special Fund is formed by non-tax revenues (revenues generated by budgetary entities, assets sales) and capital grants. Resources are earmarked mostly for capital spending and debt repayment. It comprises the development budget (for capital expenditure and big repairs), the Special-Purpose Fund (special-purpose programmes, such as capital expenditure, repayment of borrowing, creation and rehabilitation

47. "Ukraine's Decentralization Reforms Since 2014. Initial Achievements and Future Challenges", Valentyna Romanova and Andreas Umland, September 2019, research paper, Ukraine forum at www.chathamhouse.org/sites/default/files/2019-09-24-UkraineDecentralization.pdf.
48. www.oecd-ilibrary.org/sites/9789264301436-7-en/index.html?itemId=/content/component/9789264301436-7-en&mimeType=text/html

of green belt areas, provision of urban amenities, etc.) and the Environmental Fund (environmental programmes). The law allows for transfers from the General Fund to the Special Fund, but not vice versa.

*Supervision*[50]

104. 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.

105. During the previous monitoring visits in 2013, the Congress rapporteurs considered that the law, in substance, was compliant with the principles laid down in Article 8 of the Charter in respect of administrative supervision of local authorities. However, in practice they heard about alleged indirect pressure put on local elected representatives by the heads of local state administrations, resulting in the removal of mayors. This raised an issue under Article 8.3 of the Charter (proportionality principle).

106. However, since the constitutional amendments concerning the judiciary dismissed the role of the Prokuratura in implementing legality supervision over local authorities' acts, there has been no supervision mechanism established by law in Ukraine that – as noted by the Council of Europe experts – is both unusual in Europe and risky from the point of view of good governance and fighting corruption.

107. In 2018, a draft law on supervision was prepared, advised by the Council of Europe,[51] but subsequently withdrawn by the government. The discussions on the utility and the principles of such a law have not made significant progress for the last two years.

108. The previous and current draft constitutional amendments concerning decentralisation establish a new supervisory mechanism under the to-be-created institution of prefect (see previous part on the constitutional framework and its reform). There is an ongoing debate in Ukraine about introducing the institution of prefects (which will replace the head of local states administration and whose powers will be limited to legality control, similar to the French model of prefects). The question of preparing a new draft law on supervision remains open.

109. During the consultation procedure, the Ministry of Communities and Territories Development of Ukraine informed the rapporteurs that, given the new territorial basis on which the October 2020 local election will be held, the new versions of the laws of Ukraine "On local self-government in Ukraine" and "On local state administrations" prepared by the Ministry also provide for the regulation of the supervision of legality of local self-government acts, while bringing these norms in line with the current Constitution - issues of supervision can be implemented as an element of "ensuring legality in the territory", which is defined by the Constitution as a local state administration power.

### 2.2 Status of the capital city

110. There is a long tradition of city autonomy in Kyiv: In 1494 the Great Lithuanian Prince Alexander granted the Magdeburg law to Kyiv. As a result, Kyiv received the status of self-government and exemption from the jurisdiction of the state administration, which was replaced by the magistrate. Today, a special status for the capital is provided at the constitutional level: according to Article 92, paragraph 16: "the status of the capital of Ukraine; the special status of other cities" are exclusively determined by law. According to Article 133, paragraph 3, "The Cities of Kyiv and Sevastopol have special status that is determined by the laws of Ukraine". In paragraph 2 of the same Article (133), Kyiv is mentioned as a component of Ukraine alongside the city of Sevastopol and all Ukrainian oblasts. Article 118, paragraph 2, determines that "particular aspects of the exercise of executive power in the Cities of Kyiv and Sevastopol are determined by special laws of Ukraine". The latter is repeated in Article 140, paragraph 2, of the constitution: "Particular aspects of the exercise of local self-government in the Cities of Kyiv and Sevastopol are determined by special laws of Ukraine". In addition, Article 118, paragraph 1, provides that "The executive power in oblasts, rayons and in the Cities of Kyiv and Sevastopol is exercised by local state administration"; Kyiv is simultaneously both a region and a city.

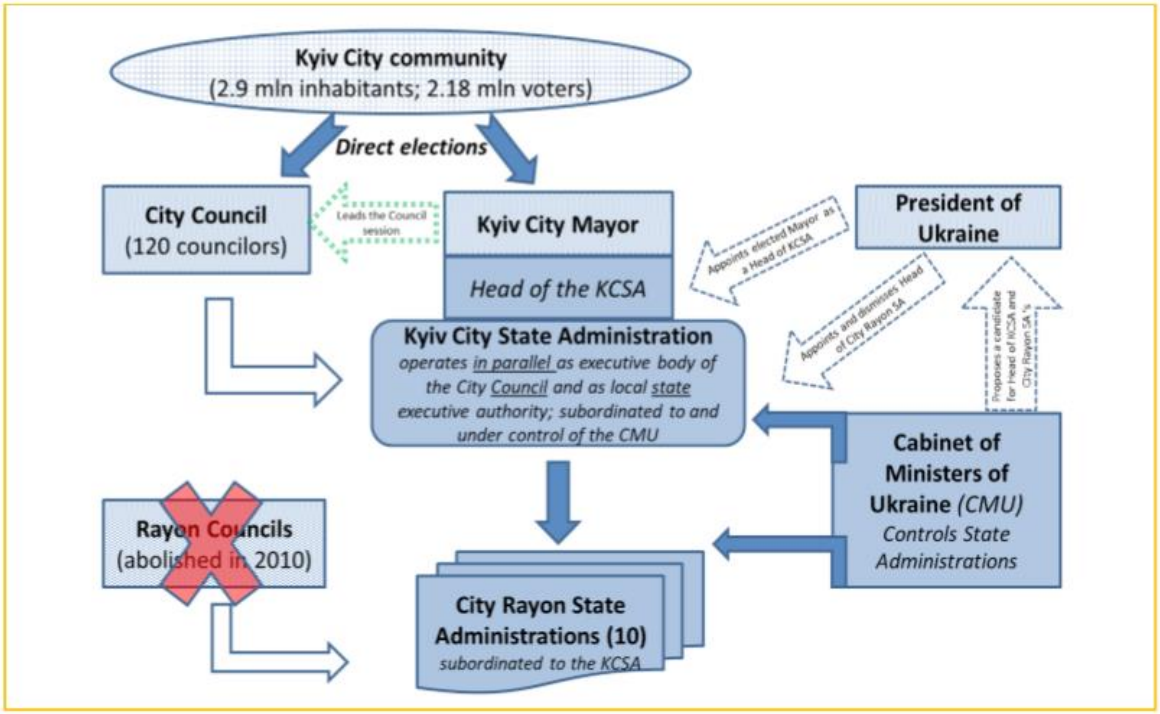
50. Congress report on local and regional democracy in Ukraine adopted on 31 October 2013.
51. www.coe.int/en/web/kyiv/-/draft-law-on-legality-supervision-in-ukraine-presented-and-discussed

111. The Law "On the Capital of Ukraine – City-Hero Kyiv" that came into force on 28 January 1999[52] is the legal basis for city governance in Kyiv. This law included, at sub-municipal level, the city district (rayon) councils and their executive bodies, but these councils were abolished in 2010 and rayon state administrations took their place (see the figure below). The territorial hromada (community) of the city is a local self-government entity, with a council and a mayor directly elected by the members of the city's territorial hromada (community). However, Kyiv City Council (unlike other city/town/village councils throughout Ukraine) cannot appoint its own executive body. Similar to the oblasts, where executive power is undertaken by a head of the oblast state administration who is appointed by the President of Ukraine upon the submission of the Cabinet of Ministers of Ukraine, there is a Head of Kyiv City State Administration who exercises executive power in Kyiv and he/she is appointed by the President of Ukraine upon the submission of the Cabinet of Ministers of Ukraine (see below).

Figure 1 illustrates the complex interrelationship between the region (Kyiv City State Administration) and the City of Kyiv (with the elected Kyiv City Mayor and City Council).

This dual public organisation on the same territory creates a lot of difficulties: it limits powers of local self-governance, as well is misunderstood by citizens and enterprises, generates complexity because respective competences are not sufficiently well delineated.

**Figure 1 – Institutional governance framework of the City of Kyiv**




*Source: Adapted from Mrinska O., 2015*[22]

22 Mrinska O., 2015. Governance responses to the economic crisis. The case of Kyiv. Studia Regionalne i Lokalne, 16(60 ), pp.97-113

112. The Kyiv City Council is the highest representative body of the city community. It is unicameral and has 120 seats. The members of the city council are directly elected by Kyiv residents, and the council is chaired by the Mayor of Kyiv or the City Council Secretary (elected among the council members). The deputies are elected for a five-year term. In 2015, five parties were elected onto Kyiv City Council: Solidarity of Petro Poroshenko's Bloc (27.56 per cent of the votes of the Kyiv electorate); Samopomich Union (11.8 per cent); Batkivschyna (8.91 per cent); Yednist (Unity) Party (7.81 per cent); and Svoboda All-Ukrainian Union (Freedom) (7.73 per cent).

113. The Secretariat of the Kyiv City Council is headed by the Deputy Mayor – the Secretary of Kyiv City Council. The structure, number of workers and expenditure of the secretariat are approved by Kyiv City Council upon

52. https://zakon.rada.gov.ua/rada/anot/en/401-14/print.

the proposal of the mayor. The staff list of the secretariat is approved by the mayor upon the proposal of the deputy mayor.

114. The incumbent Mayor Vitaliy Klitschko won the snap 25 May 2014 Kyiv mayoral elections with almost 57% of the vote. He also won the next Kyiv local elections that were held in October 2015. He is also chairing the Association of Ukrainian Cities (AUC). Mr Klitschko currently serves as Mayor of Kyiv and Head of the Kyiv City State Administration. The Head of Kyiv City State Administration is appointed by the President of Ukraine. Mr Klitschko has held both offices since his appointment as Head of Kyiv City Administration by former President of Ukraine Petro Poroshenko in June 2014.

115. In September 2019, some representatives of the Servant of the People party registered a legislative initiative to amend the law on the status of Kyiv city, notably to separate the functions of the Kyiv City Mayor and the Head of the Kyiv City State Administration. The new draft Law on the status of Kyiv (the draft law of Ukraine "On the City of Kyiv – Capital of Ukraine" (No. 2143-3) was adopted in the first reading in October 2019. It envisages that the mayor will head a new executive office of the Kyiv City Council – the Magistrate – whereas the Head of the Kyiv City State Administration will exercise oversight over the decisions of local government. This draft law was heavily criticised by Mayor Klitschko, the Association of Ukrainian Cities and some other local experts for different reasons, one of them being that it would lead to "centralisation". On 15 July 2020, the Verkhovna Rada Committee on local self-government recommended the adoption of this draft law in the second reading.

116. The Congress has provided a legal expertise of the draft, at different stages of its preparation, lately on 29 August 2020[53]. In several respects, the changes introduced by the draft law have been welcomed as they are in line with the Charter and the European standards. The clear separation between the local self-government and the executive power, and notably between the Mayor and the Head of the State City Administration, envisaged by the law, has been assessed as a positive development. However, according to the analysis, the draft law fails to achieve a balance between the two powers by conferring to the state city administration overwhelming functions, including heavy supervision and the exercise of powers that normally belong to judicial bodies. All this raises severe issues of compatibility with the constitutional principle of the separation of powers and with the proportionality principle laid down in article 8.3. of the Charter.

117. As previously indicated, the city area is sub-divided into 10 administrative districts (rayons), each of them with its Rayon State Administration. Although elected rayon councils were abolished in 2010, Kyiv City Council took a decision in 2015 to restore them and determined a list of devolved responsibilities, a reform that is yet to be implemented. The Kyiv rayons differ considerably in terms of population (from 152 000 up to 365 000) and geographical size (from 27 up to 156 km$^2$).

Figure 2 – Map of City of Kyiv and its administrative Rayons


Source: Website Wikipedia https://www.wikipedia.org/

53 see Analysis Report on the Draft Law of Ukraine "On the City of Kyiv – Capital of Ukraine" (No.2143-3), by Francesco Palermo, from 29 August 2020, at https://rm.coe.int/16809f811a

### 2.3 Legal status of the European Charter of Local Self-Government

118. According to Article 9 of the constitution:

> international treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. The conclusion of international treaties that contravene the Constitution of Ukraine is possible only after introducing relevant amendments to the Constitution of Ukraine.

There is an open question as to whether the Charter has precedence over statutory law, if the law cannot be reconciled with the Charter.

119. Article 85.32 of the constitution stipulates that the consent of the Verkhovna Rada – by adopting a law – is necessary so that an international treaty becomes binding for Ukraine. In the same way, the Ukrainian Parliament can denounce an international treaty.

120. According to Article 151 of the constitution, the Constitutional Court of Ukraine, upon submission of the President of Ukraine or not less than 45 People's Deputies of Ukraine, or the Cabinet of Ministers of Ukraine, provides opinions on compliance with the Constitution of Ukraine of the international treaties submitted to the Verkhovna Rada of Ukraine for granting agreement on their binding nature (or for international treaties that are in effect in Ukraine).

121. A 2013 report cited the President of the Constitutional Court of Ukraine, who had declared that the Charter had been used as a reference text in a series of the court judgments (18 judgments in total) relating to problems of local governance. Example judgments include those 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; and of 16 April 2006 on the repeal of acts of local authorities. The court directly referred to the Charter in all those cases.

### 2.4 Previous Congress reports and recommendations

122. The Congress previously reported on Ukraine in 1998, 2001 and 2013. Congress Recommendation 102 (2001) had recommended the initiation of territorial governance reform projects. However, as the 2013 report noted, no large-scale, in-depth and coherent reform had been carried out (whether for local and regional governance, regional state administration, interbudgetary relations or local or state-run services). One final attempt at major reform failed in 2009.

123. The 2013 report resulted in Recommendation 348 (2013). It positively evaluated, among other things, 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"; the adoption of the "Law on Associations of Local Authorities" of 16 April 2009; the creation of 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 administration and local authorities.

124. In the same recommendation, however, the Congress expressed its concern about: the legislation that limited the local authorities' ability to take decisions and the fact that they cannot fully exercise their competences (Articles 3 and 4 of the Charter); the limits put on financial autonomy through the system of interbudgetary relations (and its lack of transparency), as well as the insufficient concomitant financing of delegated competences and the complexity of the equalisation formula; the absence of a clear division of powers between central government administration and local and regional authorities, which may give rise to overlapping or duplication and cause state interference (in contrast to Article 4, paragraphs 4 and 8, of the Charter); the slow pace of reform despite the strong statements and the recentralisation of the competences of small towns by the allocation of these powers to the state.

125. It was recommended that the Ukrainian authorities: reinforce subsidiarity by granting local authorities competence for a substantial share of public affairs and increasing the capacity of local authorities to act, by promoting voluntary amalgamations and intermunicipal co-operation; reinforce the financial autonomy of local authorities and improve the equalisation system, providing a fair and transparent redistribution of funds; transfer the competences of the administrations in districts and regions to elected representatives in order to establish an administration under their responsibility; develop specific strategies aimed at revitalising the

periurban and rural areas exposed to demographic, economic and social decline, involving local authorities; implement the reform in a timely manner and, if necessary, revise the constitution; ratify the additional protocol on the right to participate in the affairs of a local authority (CETS No. 207).

## 3. HONOURING OF OBLIGATIONS AND COMMITMENTS: ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER (ARTICLE BY ARTICLE)

### 3.1 Article 2 – Constitutional and legal foundation for 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. |

126. According to the contemporary commentary on the Charter,[54] Article 2 binds the parties to recognise "the principle" of local self-government. This expression introduces into the Charter the difference between "principles" and "rules". Consequently, it is considered sufficient, in order for a party to comply with Article 2, to recognise the core elements of local self-government in written rules, without the need for detailed regulation.

127. In order to define these "core elements", a key role is played by the Preamble and by Article 3 of the Charter. Both refer to the aspects of local self-government that have always been considered as essential features of this concept in the modern European tradition: (a) "local authorities endowed with democratically constituted decision-making bodies"; (b) "a wide degree of autonomy with regard to their responsibilities"; (c) "ways and means by which those responsibilities are exercised, and the resources required for their fulfilment". Therefore, it would be necessary to check not only the formal recognition of the principle in the domestic legislation, but also whether those core elements are enshrined in that legislation.

128. As the 2013 report pointed out, the principle of local self-government is set out in Article 7 of the constitution: "In Ukraine, local self-government is recognised and guaranteed". Article 92, paragraph 15, of the constitution lays down the principle that the "principles of local self-government" shall be determined exclusively by law.

129. According to Article 71 of the constitution, elections to bodies of local self-government are free and are held on the basis of universal, equal and direct suffrage, by secret ballot; moreover, Article 141, paragraph 1, of the constitution stipulates, *inter alia*, that "a village, settlement, city, district, oblast council is composed of deputies elected by residents of a village, settlement, city, district, oblast on the basis of universal, equal and direct suffrage, by secret ballot". Local authorities in Ukraine are endowed with democratically constituted decision-making bodies.

130. According to Article 140, paragraph 1, of the constitution, local self-government is the right of a territorial community to independently resolve issues of local character within the limits of the constitution and the law of Ukraine. A similar definition is found in Article 2 of the Law on Local Self-Government in Ukraine, which also includes Article 4 with 10 "basic principles of local self-government" (rule of the people, legality, transparency, collegiality, integration of local and state interests, electivity, independence within its powers, accountability and responsibility, state safeguards, and judicial protection) and, *inter alia*, an extensive description of local government powers in section II. This is a legal basis, together with several other special laws, for the autonomy of local authorities with regard to their responsibilities in Ukraine.

131. According to Article 142 of the constitution:

> the material and financial basis for local self-government is movable and immovable property, revenues of local budgets, other funds, land, natural resources owned by territorial communities of villages, settlements, cities, city districts, and also objects of their common property that are managed by district and oblast councils.

The issue of means and resources available to local authorities is further regulated in section III of the Law on Local Self-Government and especially in the Tax Code and in the Budget Code.

54. Group of Independent Experts on the European Charter of Local Self-Government, Congress commentary on the explanatory report of the European Charter Of Local Self-Government, contemporary commentary on the Charter's provisions on an article-by-article basis, in: www.coe.int/en/web/congress/all-news-newsletter/-/asset_publisher/CR0prMtPOIKO/content/a-contemporary-commentary-for-a-better-understanding-of-the-european-charter-of-local-self-government?_101_INSTANCE_CR0prMtPOIKO_viewMode=view/.

132. Therefore, the rapporteurs consider that the requirements of Article 2 of the Charter are globally satisfied in Ukraine.

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

**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.

#### 3.2.1 Article 3.1

133. According to the contemporary commentary on the Charter[55] this provision defines the content and the subjects of local self-government. As subjects, the Charter mentions the "local authorities". These are territorial public entities endowed with their own legal personality having the power to make decisions and enforce them. These authorities should have the democratic features provided by Article 3.2. Different types of local authorities are the addressees of the Charter, since they are not confined to the lowest or "local" level of territorial organisation and may encompass also "regional" bodies (see Article 13 of the Charter). Therefore, the notion of "local authorities" should be understood and interpreted in a broad sense. It comprises different types of entities such as urban and rural municipalities, county-type cities and capital cities with special status, supra-municipal or provincial entities. In the case of Ukraine, the notion of "local authorities" also includes district and oblast councils, as was already noted in the previous monitoring report of 2013.[56]

134. According to the Charter, local governments should regulate and manage a "substantial share of public affairs". The Charter grants a certain margin of appreciation to states in order to set "the limits of the law" and to identify the radius of action of local authorities. However, the Charter stresses that the share of public affairs managed by local government should be "substantial" and not residual. In other words, local entities should have a range of responsibilities offering the possibility of local public policies for the benefit of the local population.

135. Local authorities cannot regulate and manage effectively a "substantial share of local affairs" if these authorities are too small and/or are deprived of the resources necessary to fulfil their tasks. Therefore, amalgamations of municipalities may be advisable. Another possibility is the use of intermunicipal co-operation to achieve joint service provision. The latter as well as territorial reforms have been implemented in the case of Ukraine, as already described elsewhere in this report. It must be noted, however, that neither amalgamation nor inter-municipal co-operation relieves the state of its fundamental duty to ensure that local authorities are provided with the financial resources they need to fulfil their tasks. Inter-municipal cooperation, which is primarily a right of local self-government and not an obligation. As a rule, it should serve to increase the efficiency and professionalism of task fulfilment for the benefit of the municipalities and their citizens, and not to enable task fulfilment in the first place.

136. Congress interlocutors and especially the Association of Ukrainian Cities (AUC) assess the reform in a positive way, primarily within territories that do not include the cities of oblast significance. ATCs received the powers and financial resources that the cities of oblast significance have, specifically in the provision of education, health care, and social and administrative services. The cities of oblast significance received the opportunity to expand into neighbouring territorial communities that had voluntarily decided to merge with them.

137. According to the same association and other interlocutors, however, local authorities do not have the real possibility to "regulate" a significant part of public affairs, since "all key issues are regulated through legislation, while community charters play a purely decorative role". The Charter stipulates that local authorities do not simply manage or take care of their affairs; they also "regulate" them, that is, they also issue local ordinances and by-laws. This does not imply that the Charter prescribes a certain level of regulatory autonomy that should be granted to local authorities. It is up to the national legislation to define the level of this normative autonomy and the procedural or/and substantial conditions for primary or delegated normative powers exercised by local governments. However, a complete deprivation of regulatory powers would contradict the Charter.

55. Ibid, paragraph 26.
56. Local and regional democracy in Ukraine, CG(25)8FINAL 31 October 2013, 25th SESSION Strasbourg, 29-31 October 2013, paragraph 182, in: https://rm.coe.int/local-and-regional-democracy-in-ukraine-recommendation-mr-marc-cools-b/168071a834.

138. It seems that in Ukraine, as in many other European countries, state legislators are prone to regulating as much as possible in order to ensure the desired policy implementation throughout the country, at all administrative levels and especially in fields that are subject to international rules and observation (finance or the environment, for example). It is difficult to assess whether this tendency for detailed legislation has led to clear violation of the Charter, also because there are obvious differences across the different policy sectors. But national authorities, including those in Ukraine, should be warned to leave enough margin for local autonomy.

139. Despite some ongoing deficiencies, it is obvious that the reform has led to the transfer of several important responsibilities and the devolution of power to territorial communities; intermunicipal co-operation has also enlarged the scope of action for local self-government in Ukraine. Therefore, the rapporteurs conclude that Article 3.1 is respected in Ukraine.

### 3.2.2 Article 3.2

140. The right of self-government must be exercised by democratically constituted authorities. The Charter prioritises a system of representative democracy at local level, in which the decision-making power is exercised by councils or assemblies directly elected by the people. Direct democracy plays a complementary (and not substitutive) role. Thus, local elections play a key role in local democracy: local representatives must be directly elected in free elections, by secret ballot based on direct, equal, universal suffrage. In addition, the right to participation that has been especially developed in the additional protocol, considers both forms of participation: a) as voters or candidates in local elections; b) direct involvement in consultative processes, local referendums, and petitions.[57]

141. As for the structure of government at local level, the Charter does not express an option in favour of one specific form of local political organisation, leaving the choice in the hands of domestic legislation. The Charter only points out the central role that must be accorded to elected councils and assemblies. The representative body is indeed the organ required to deal with matters of greatest importance to the local community, such as budgetary or tax matters. But the Charter does not refer to the necessity of having executive bodies, or to the way in which they are appointed; it is only stated that elected councils or assemblies "may possess executive organs responsible to them".[58]

142. The Charter underlines that existing executive organs are "responsible" to the elected councils or assemblies. The interpretation of the notion of "responsibility" has important consequences for the local form of government. In any case, the primacy of the directly and universally elected council or assembly means that this body takes the most relevant decisions and that there should be some tools to make the executive body accountable to the council. The concept of "responsibility" does not necessarily mean that the executive must be dismissible by the assembly. The minimum that is necessary for the "responsibility" requirement to be met is the introduction of a system of effective supervision of the executive by the assembly, allowing regular scrutiny of the executive's activities.[59]

143. While first-tier municipalities have their own executive bodies, in Ukraine the constitution itself defines in Article 118, paragraph 1, that "the executive power in oblasts, districts and in the Cities of Kyiv and Sevastopol is exercised by local state administrations". Therefore, an obvious question arises about the relation between the state administration and the elected councils at rayon or oblast level.

144. Precisely this relation is the subject of constitutional norms in Article 118, paragraphs 7-10, of the Ukrainian Constitution:

> Local state administrations are accountable to and under the control of the bodies of executive power of a higher level.
> Decisions of the heads of local state administrations that contravene the Constitution and the laws of Ukraine, other acts of legislation of Ukraine, may be revoked by the President of Ukraine or by the head of the local state administration of a higher level, in accordance with the law.

57. Group of Independent Experts on the European Charter of Local Self-Government, Congress commentary on the explanatory report of the European Charter of Local Self-Government, Contemporary commentary on the Charter's provisions on an article-by-article basis, paragraph 40.
58. See Recommendation 113 (2002) on relations between the public, the local assembly and the executive in local democracy (the institutional framework of local democracy).
59. Ibid, paragraph 44.

> An oblast or district council may express no confidence in the head of the respective local state administration, on which grounds the President of Ukraine adopts a decision and provides a substantiated reply.
> If two thirds of the deputies of the composition of the respective council express no confidence in the head of a district or oblast state administration, the President of Ukraine adopts a decision on the resignation of the head of the local state administration.

145. Formally, these norms ensure the accountability of local state administrations towards the elected rayon or oblast councils. But local interlocutors (including the Mayor of Kyiv) have expressed their scepticism about the loyalty of state administrations, which can hardly achieve a balance in a system requiring a kind of "double-faced" loyalty (to the national level and to the oblast or rayon councils at the same time). Therefore, they required the development of a separate, oblast and/or rayon-dependent mechanism of executive administration.

146. The Association of Ukrainian Cities also pointed out emerging conflicts between local government representative bodies (city councils elected on a party list principle) and mayors (elected on a first-past-the-post principle and not necessarily representing a party). However, as already noted, the Charter allows a wide margin for domestic legislation concerning the election and the governance system.

147. Another much more critical issue has also arisen from the fact that on 1 January 2020 the Verkhovna Rada of Ukraine (VRU) amended the law on local elections. A money deposit for candidatures for local council seats or mayor post (local governments with 90 thousand voters and more) has been increased to an amount equivalent to four minimum wages set on the day of the beginning of the election process for every 10 thousand voters in the respective single oblast or city electoral district for each type of separate election. For example, the amount of this deposit for a candidate for the post of the Mayor of Kyiv would be UAH 4 million (US$154 000). Deposits, however, should only cover administrative costs and even discourage non-serious candidatures, but they should certainly not be of such an amount as to be a financial hurdle for candidates who are short of financial resources.

148. On 16 July 2020, the Verkhovna Rada of Ukraine further amended the electoral legislation (the Law of Ukraine "On Amending Certain Laws of Ukraine Regarding Improvements of the Election Legislation" (No.3485).

149. It reduced by nine times the amount of money deposit for candidates to local councils with the number of voters over 10 thousand and for mayoral candidates.

150. Among other new rules that have been introduced and will apply during the next local elections:
- the proportional system of elections for local governments with the number of voters over 10 thousand;
- the "imperative" representative mandate for local council members (the local council member may be recalled according to the party decision if: his or her activity is not in line with the party line (or of its branch), or if he or she has failed to join the faction of the local party organisation or has been expelled from it);
- the new system to determine the winners qualifying to the local council inside the party list.

151. During the consultation procedure, the Association of Ukrainian cities (AUC) underlined that it did not support the changes to the electoral law because they limit the right of citizens to participate in the elections. It criticised changing the electoral legislation three months before the elections, still rather high deposits that may become financial barriers for candidates to local councils and mayorship in the cities of oblast significance, and the absence of the legally defined powers and assigned resources. According to AUC, the deposit for the mayoral position or for a party nominating their candidates to the local council would now constitute 445 thousand UAH (or 15 thousand Euros) for the city of Kyiv (compared to 4 million UAH (or 133 thousand Euros) prior to the amendments).

152. In this respect, the rapporteurs would like to refer to the Guidelines on political party regulation by OSCE/ODIH and the Venice Commission[60], stating that " while monetary deposits may be required, monetary deposits which are excessive may be deemed discriminatory as they limit the right of citizens without adequate resources to stand for election as protected under human rights instruments". In the rapporteurs' view, the revised amount of deposits is still excessive in relation to the average monthly wage in Ukraine (around 360 Euros) and may become an obstacle for some categories of population to stand for election because of their financial status.

60 Guidelines on political party regulation by OSCE/ODIH and the Venice Commission, adopted by the Venice Commission at its 48th Plenary session (Venice, 15-16 October 2010) at https://www.venice.coe.int/WebForms/documents/default.aspx?pdffile=CDL-AD(2010)024-e

153. The rapporteurs would also like to raise the issue of incompatibility of the "imperative mandate" with Article 3.2 in conjunction with Article 7.1 of the Charter ( the right to the free exercise of the functions of local elected representatives) and warn against distorting consequences of the application of this instrument in the local democratic life. The Venice Commission has also concluded that the principle of prohibition of the imperative mandate is relevant for individual members of local councils. [61]

154. Another aspect of citizens participation is their engagement in policy making and decision making at the local level, which is not an easy path in a country suffering from a low level of trust in public institutions. In reality, the most common mechanisms for civic participation in decision making include: meetings of residents, citizen self-organisation bodies, public hearings, local initiatives, public expertise, public consultations, community councils, citizens' petitions, contact centres, consultative and advisory bodies, participatory budgets, and participation in tender commissions and committees. The procedure for implementing the mechanisms of citizen participation is often regulated through separate provisions or in the main document of the territorial community – the community charter. Concerning local referendums, there is still no special law in Ukraine.

155. Provisions about the high levels of deposits for some candidatures are violating the freedom to participate as candidates in local elections and this constitutes a violation of Article 3, paragraph 2, of the Charter.

### 3.3 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.
3. Public responsibilities shall generally be exercised, in preference, by those authorities who 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.

#### 3.3.1 Article 4.1

156. Article 4.1 requires clarity and legal certainty for the regulation of the "basic powers and responsibilities" of local government bodies. They should be prescribed by the constitution or by statute, so as to provide predictability, permanence and protection for the benefit of local self-government. Therefore, the tasks of local authorities should not be assigned on an ad hoc basis and should be sufficiently enshrined in written parliamentary legislation. Establishing local powers and competences by means of administrative regulation should be avoided and goes against the spirit of the Charter. This general rule is not incompatible with the attribution to local authorities of powers and responsibilities "for specific purposes" in accordance with the law.[62]

157. National legislations follow different patterns on regulating the allocation of local responsibilities. In some countries, there are general statutory provisions that use broad terms in order to describe the "matters" or domains of such responsibilities (such as "elementary education" or "green spaces"). Then, in a second step, sector-specific legislation precisely identifies the concrete tasks to local governments. In other countries, there are no general provisions and the concrete tasks and responsibilities of local governments are singled out in a wide range of sector-specific legislation. In such cases, it is nearly impossible to get a comprehensive picture, a situation that could frustrate transparency and obstruct efficient consultation of local authorities according to Article 4.6.[63]

61 Venice Commission, CDL-AD(2019)011, Report, and Opinion No. 910/2017 on the recall of mayors and local elected representatives paragraph 118, at https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)011rev-e
62. Group of Independent Experts on the European Charter of Local Self-Government, Congress commentary on the explanatory report, paragraphs 49-50.
63. Ibid, paragraph 55.

158. As already noted in the previous report of 2013 (paragraph 83),[64] 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). It introduces a complex system for allocating powers between the different organs of an authority (council, executive body, mayor) while it also makes a distinction between its own and delegated powers. On the other hand, several national laws would assign to state entities (central government departments at local and regional levels or new national agencies) powers that were hitherto wholly or partly the responsibility of local authorities.[65]

159. An emerging question is which powers and responsibilities can be "basic" and do require, in principle, systematic regulation. But the definition of "basic" powers cannot be the same in the different parties and national authorities have a wide margin of discretion in defining these "basic" powers. Traditional tasks characterising local government operation in a specific country would certainly be part of those basic powers.[66]

160. Apart from Article 143 in the constitution, which mentions some important responsibilities of local government, there are the lists of powers in the Law on Local Self-Government. Therefore, Article 4, paragraph 1, is respected in Ukraine. However, the rapporteurs would like to stress the need for further systematisation and modernisation of the legal framework, especially since many additional competences have been transferred to ATCs.

### 3.3.2 Article 4.2

161. It is important to the conception of local authorities as political entities acting to promote the general welfare of their inhabitants that they have the right to take initiatives on matters not explicitly excluded from their competence by the law.[67]

162. The Ukrainian Constitution establishes a general residual clause of competence in Article 140, paragraph 1: "Local self-government is the right of a territorial community … to independently resolve issues of local character within the limits of the Constitution and the laws of Ukraine".

163. In Article 2, paragraph 1, of the Law on Local Self-Government there is a similar definition:

> Local self-government in Ukraine is the State-guaranteed right and actual capacity of territorial community … to resolve independently, or under responsibility of local self-government bodies or officials, matters of local significance within the limits of the Constitution and the laws of Ukraine.

164. Local government associations, however, have been complaining about the extensive state regulation of different fields of action that would barely leave any margins for local statutes and initiatives. In fact, this kind of critique emerges in many European countries, due to the tendency of domestic legislators to regulate even the details in many policy fields and, in addition, to introduce several controls and requirements for previous state approvals that suffocate local initiatives. But this a common problem that does not seem to have extraordinary dimensions in Ukraine; moreover, the rapporteurs had the impression that it would rather be the lack of resources that would frustrate local initiative. Their conclusion is, therefore, that Article 4.2 is formally respected in Ukraine.

### 3.3.3 Article 4.3

165. This paragraph of the Charter introduces the "subsidiarity principle", whereby public responsibilities should be exercised "in preference" by those authorities or bodies that are closest to the citizen. This principle spans all levels of territorial organisation and introduces closeness to the citizens as a primary criterion for the allocation of responsibilities, unless there are overriding considerations of efficiency and economy because of the extent and the nature of the task. It is of central importance for the protection of local authorities against up-scaling and recentralisation tendencies that threaten to empty the substance of local self-government. Moreover, subsidiarity can reduce the possible rigidity that unity of application can involve. In this sense, subsidiarity better achieves efficiency, responsiveness and accountability of governmental action.[68]

166. In Ukraine, this principle has been involved when additional tasks were transferred to ATCs. Moreover, powers in the area of architecture and construction control and improvement of urban planning laws have been

64. Ibid.
65. Ibid.
66. Ibid, paragraph 56.
67. Ibid.
68. Ibid, paragraphs 61-65.

decentralised, and local government was given the right to determine urban planning policy. The Verkhovna Rada of Ukraine adopted laws decentralising part of central government agencies' powers related to basic administrative services, such as the registration of real estate, business and residential addresses, by passing them down to the community level. A municipal guard law has already been drafted to provide local government with an effective instrument for administering law and order on its territory.

167. Despite these efforts, the principle of subsidiarity in the sense of strengthening local self-government is not yet sufficiently implemented at present. As some foreign observers put it during the monitoring visit, the principle of subsidiarity is still essentially understood as a principle of de-concentration. This becomes clear on the one hand from the lack of distinction between local authorities' own and delegated tasks and on the other hand from the predominantly task-related financing of municipal tasks.

168. Therefore, despite important efforts to decentralise responsibilities and enlarge the scope of local government competence, the rapporteurs conclude that Ukraine only partially complies with Article 4, paragraph 3.

### 3.3.4 Article 4.4

169. According to Recommendation CM/Rec(2007)4 of the Committee of Ministers to member states on local and regional public services,[69] lawmakers should establish a clear definition of the responsibilities of the various tiers of government and a balanced distribution of roles between these tiers in the field of local services. This would make it possible to avoid both a power vacuum and the duplication of powers. Moreover, this allocation of responsibilities should promote predictability and guarantee continuity in the provision of certain local public services that are considered to be essential for the people.

170. In several monitoring reports it has been pointed out that confusion and lack of clear demarcation of powers would blur responsibility and lead to a power shift benefiting the higher levels and especially the central authorities. Due to the lack of resources at lower governmental levels, complementary action by higher-level authorities is often required, but quite often this is not made on the basis of parity and partnership; local authorities would then be reduced to mere agents of regional or national authorities.[70]

171. As admitted by Verkhovna Rada representatives, there are serious administrative and legal problems with the delineation of authority between various local state executive and self-government bodies. This is a consequence of the gaps and conflicts in administrative and legal regulations, moreover of relative inconsistency of acts adopted at different times. Also, representatives of the diplomatic corps have identified as a "fundamental and urgent issue facing the whole local self-government in Ukraine" the problem of unclear division between tasks that are delegated by the state to local self-government to perform ("delegated tasks"), and those tasks which fall entirely under local self-government's responsibility and discretionary powers ("own tasks").

172. In Ukraine, laws are being drafted to clearly allocate powers in education, health care, recreation, social and economic development, and infrastructure among local government agencies and executive agencies at every territorial level of the country's administrative division. However, according to the Association of Ukrainian Cities, a clear delineation of powers between the new basic (amalgamated territorial communities), rayon and oblast levels is still missing and inconsistencies still remain.

173. In some policy fields, for instance, local governments are not able to fully exercise their new responsibilities. Concerning territorial planning, management of land resources and urban improvements, for example, local governments are constrained by the boundaries of construction development (boundaries of populated areas). Another example is the lack of distribution of authority for granting the approval for extraction of local mineral resources and peat using special technical equipment, which can lead to undesirable environmental consequences (Article 23 of the Code of Ukraine on Subsoil Resources).

During the consultation procedure, the Ministry of Communities and Territories Development of Ukraine informed the rapporteurs, that draft of the new version of the Law of Ukraine "On Local Self-Government in Ukraine" envisages the division of powers of local self-government bodies into own and delegated tasks.

69. Adopted by the Committee of Ministers on 31 January 2007 at the 985th meeting of the Ministers' Deputies.
70. Group of Independent Experts on the European Charter of Local Self-Government, Congress commentary on the explanatory report, paragraph 70.

At the same time, it would define as own powers those powers of local government, aimed at ensuring the living environment of the territorial community (territorial communities) as defined by the Constitution of Ukraine and by this law, and it would define as delegated powers- those competences on providing public services which belong to a state executive authority but are assigned by a special law to a local self-government authority.

According to the Ministry, the draft law proposes to clearly define the own powers of local governments in all spheres of life, while the delegated powers of local governments in the relevant areas should be defined exclusively by sectoral laws in these areas.

174. In addition, the draft would also introduce the Unified State Register of Local Government Powers in order to obtain a "complete picture".

175. One of the main challenges of the reform process is to allocate clearly the tasks and responsibilities to the different levels and to eliminate an overlapping of competences. As long as this is not achieved to a satisfactory level, there is only partial compliance of Ukraine with Article 4, paragraph 4, of the Charter.

### 3.3.5 Article 4.5

176. The delegation of competences and governmental tasks may adopt different mechanisms. Usually, the state or regional authorities keep the ownership of the competence and transfer to local entities the exercise or application of that competence. At the same time, the delegating bodies (in their capacity as “master of the competence”) keep the power to instruct the local bodies on how to implement the delegated tasks and to supervise the execution of those delegated tasks.

177. According to Recommendation CM/Rec(2007)4 of the Committee of Ministers to member states on local and regional public services, the proximity to the population of local public services is a fundamental necessity. In order to ensure that services are adapted to the citizens’ needs and expectations, local entities should benefit from a high degree of decentralisation and a capacity for independent action. Delegating authorities should adopt minimum standards for the protection of the users of the delegated services and create the necessary machinery for monitoring compliance with them.[71]

178. But, quite often, state interventionism has led to overregulation and over-delegation, that may undermine the autonomy of local authorities and even distract local self-government from its elementary role and duties. According to the Association of Ukrainian Cities, there is an over-centralisation of authority concerning the delegated tasks and all key issues are thoroughly regulated through the legislation. Moreover, there is confusion in several cases about the nature of local government tasks, whether they should be considered as “own” or “delegated” ones, and this would encourage state interventionism in local government activities.

179. During the consultation procedure, the Ministry of Communities and Territories Development of Ukraine again pointed to the draft of the new version of the Law of Ukraine “On Local Self-Government in Ukraine” which defines powers which are exercised by local self-government bodies at their own discretion and cannot be controlled by sectoral bodies as exclusively own powers. According to the Ministry such approach to differentiating between own and delegated competences, would ensure the appropriate autonomy of local self-government bodies.

180. The rapporteurs conclude that there is only partial compliance with Article 4, paragraph 5, in Ukraine.

### 3.3.6 Article 4.6

181. Consultation is a key principle of the Charter and local authorities should be consulted by state (or regional) bodies in the discussion on and approval of laws, regulations, plans and programmes affecting the legal and operational framework of local democracy. This also increases democracy, in the sense that decision makers should listen to the voice of local authorities and of their associations. Moreover, this is demanded by the principles of transparency in the governmental action, and by the principle of subsidiarity.[72]

71. Adopted by the Committee of Ministers on 31 January 2007 at the 985th meeting of the Ministers’ Deputies.
72. Group of Independent Experts on the European Charter of Local Self-Government, Congress commentary on the explanatory report, paragraph 79.

182. The Congress has adopted several recommendations and resolutions on the right of local authorities to be consulted by other levels of government.[73] In its Recommendation 171 (2005) the Congress emphasised that the right of local authorities to be consulted is a fundamental principle of European legal and democratic practice, the aim of which is to contribute to good governance.[74] Recommendation 328 (2012)[75] emphasises that consultation should be organised in a manner and timing such that local authorities have a real opportunity to formulate and articulate their own views and proposals, in order to exercise influence.

183. In, Ukraine the law "on Local Government Associations in Ukraine", refers to mechanisms for interaction between the state and local governments and their associations. These are consultations and a presentation of expert opinions on draft regulatory and legal documents. For instance, AUC participates with an advisory vote in regular meetings of the Cabinet of Ministers and Cabinet of Ministers Committees as well as in the meetings of several parliamentary committees.

184. It should also be mentioned that every year, the AUC conducts a Municipal Forum whose agenda includes a Day of Dialogue with the Central Government. The AUC submits more than 320 expert opinions to draft regulatory acts to central government authorities (central state authorities and the VRU).

185. The Office of the President of Ukraine has affirmed that its subdivision – the Directorate for regional policy and decentralisation – consults and directly interacts with the local and regional authorities via the participation of their representatives and their associations in the activity of the Council of Development of Communities and Territories – the advisory body created by the President of Ukraine in order to organise the co-operation between the President of Ukraine, the Parliament of Ukraine, the Cabinet of Ministers of Ukraine, the state agencies and local self-government.

186. Concerning the legislative process, most consultations take place at different stages on the basis of relevant committees and sub-committees.[76] Some examples mentioned during the visit were the bills "On the City of Kyiv – the Capital of Ukraine", the Electoral Code of Ukraine (Reg. No. 0978) and on amendments to the Law "On Voluntary Association of Territorial Communities" in regard to simplifying the approval procedure for the plans of community territories of the Autonomous Republic of Crimea and the regions (No. 348-IX of 5 December 2019). The practical implementation of the provisions of this law has resulted in broad consultations of the respective committee, ministry and the regional state administrations with the settlement's residents regarding the plans for the territories, their boundaries and composition.

187. During the consultation procedure, the Ministry of Communities and Territories Development of Ukraine has underlined that since February 2020 public discussions have been held about the proposals for amendments to the Constitution of Ukraine regarding decentralisation with the participation of representatives of local self-government bodies, local state administrations, scientists, experts. The main purpose of these discussions, started at the initiative of the Office of the President of Ukraine and the Committee of the Verkhovna Rada of Ukraine on the organisation of state power, local self-government, regional development and urban planning, has been to harmonize all contentious issues and to take maximum account of the principles of the European Charter of Local Self-Government, which is an integral part of the national legislation.

188. Nevertheless, the AUC has complained about the draft constitutional amendments, claiming that the association and local government representatives were excluded and the draft law "was drafted behind closed doors". There were also other complaints about a "degradation" of deliberation procedures and "mistrust" of the new national government since the 2019 political change towards local governments (especially where the "old" political establishment is still in charge).

189. Consequently, the rapporteurs would encourage the Ukrainian authorities to increase collaboration and dialogue with local authorities and their associations, especially concerning the major challenge of the ongoing constitutional reform.

190. Therefore, the rapporteurs conclude that there is partial compliance with Article 4, paragraph 6, in Ukraine.

73. Resolution 368 (2014), debated and adopted by the Congress on 27 March 2014, rapporteur: Anders Knape, Sweden (L, EPP/CCE). See also: Resolution 437 (2018) on the consultation of local authorities by higher levels of government, of 8 November 2018.
74. Debated and approved by the Chamber of Local Authorities on 1 June 2005 and adopted by the Standing Committee of the Congress on 2 June 2005 (see Document CPL (12) 5).
75. Debated and adopted on 18 October 2012 by the Congress (see Document CG(23)ll, explanatory memorandum).
76. See the pertinent report at: http://komsamovr.rada.gov.ua/uploads/documents/41733.pdf.

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

| **Article 5 – Protection of local authority boundaries** |
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| 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. |

191. Territorial reforms have been implemented in several European countries, where the existence of very small and weak municipalities goes along with a shortage of capacities leading to inefficiency and non-compliance with Charter requirements. In this context, the Charter does not prohibit amalgamations, nor impose a closed pattern of territorial or institutional design. It introduces procedural rules for changes in local authority boundaries.

192. In this vein, it is a mandatory procedural requirement that no change of local boundaries may be adopted without consultation. This must take place at a timely stage before a final decision on this matter is made. This is required in order to promote the efficiency of consultation, in other words the real possibility of local communities to be heard and to express their views at a time where influence over amalgamation decisions and their different aspects can really be exercised and consultation is not just of a formal or symbolic nature. If the amalgamations include a considerable part of the country or the whole country, then the national associations of local or/and regional authorities should also take part in the consultation procedures.[77]

193. In its Recommendation Rec(2004)12, the Committee of Ministers has established some principles that should be followed by the parties when they engage in reforms of boundaries or the structure of local authorities.[78] Moreover, the objectives, methods and results of a process of reform should be fully compatible with the provisions of the Charter. Furthermore, where appropriate, the parties should further ensure that the objectives, methods and results of the process of reform comply with their obligations under Article 7.1.*b* of the European Charter for Regional or Minority Languages, and Article 16 of the Framework Convention for the Protection of National Minorities.

194. According to some international experts, there has been growing recognition during the territorial reform in Ukraine that consultation processes are important and necessary. Subsequently, consultations were held at the oblast level in the context of implementing certain criteria in “Perspective Plans” for the formation of “capable” new ATCs. The quality of the consultations appears, however, to have varied considerably. In the District of Fastiv, for instance, the district council and village/village councils made decisions that took into account the opinion of communities, then they submitted their proposals to the Kyiv Regional State Administration for consideration. According to information provided by the Chairman of the District Council, these proposals, however, were largely ignored.

195. The rapporteurs also received several complaints from local authorities of various municipalities from Lviv and Kyiv regions who opposed either the “forced” merger of their communities in the amalgamated territorial communities or the merger of their ATC into a bigger one which had to be established in accordance with the perspective plans for the formation of communities' territories of those regions. The local authorities in question defended their right to establish separate ATCs because this option had been supported by the residents during the public hearings.

196. The municipalities complained that they were not consulted, neither by the respective oblast state administrations responsible for preparing the perspective plans of mergers nor when those plans were subsequently approved by the Cabinet of Ministers of Ukraine.

In this connection, the Congress sought the comments of the government on the situation. In contrast to the views expressed by the above-mentioned municipalities, the Ministry of Communities and Territories Development of Ukraine in its reply (letter №7/34/13216-20 from 31.07.2020) emphasised that the Ukrainian legislation requires that local authorities and their associations are consulted on boundary changes and that the process of preparing the perspective plans of communities’ territories in the said regions complied with the Ukrainian legislation and European standards on consultation.

77. Group of Independent Experts on the European Charter of Local Self-Government, Congress commentary on the explanatory report, paragraph 90.
78. Recommendation Rec(2004)12 of the Committee of Ministers to member states on the processes of reform of boundaries and/or structure of local and regional authorities (adopted by the Committee of Ministers on 20 October 2004 at the 900th meeting of the Ministers’ Deputies).

197. While the amalgamation of communities started as voluntary, indeed, it was finalised by the government decree in view of the necessity to complete the territorial reform ahead of the local elections scheduled for 25 October 2020.

198. According to some international experts, a switch to compulsory amalgamations appeared inevitable. However, like in some other European countries, the option of compulsory amalgamations made reformers encounter immediate resistance at various levels, including legal and political challenges, and may lead to longer-term resentment among the citizens themselves. Therefore, sufficient and transparent consultation of the local authorities and the citizens concerned was needed more than ever, combined with a clear strategy of communicating the objectives, the criteria and the advantages of amalgamations, especially the possibility to offer better local services and more competences. This process needed time and had to follow Article 5 of the Charter (in-depth consultations of municipalities affected).

199. In the cases of ATCs, particular attention should have been paid to the principle of the protection of legitimate expectations and well-grounded trust. These hromadas needed to trust that their decisions for voluntary amalgamations will be respected for some time. Every ATC has made considerable efforts to find a new identity, to create new structures and to offer its citizens better public services. Only for singular and specific reasons of public interest should these ATCs have been reconstituted again, as several interlocutors have noted. The All-Ukrainian Association of the amalgamated territorial communities of Ukraine complained that the dialogue with many communities was not conducted or their position was only formally clarified and not taken into account, in particular with regard to forceful mergers of those ATCs that had merged before voluntarily.

200. During the consultation procedure, AUC informed the rapporteurs that while approving territorial changes, the government did not take into account its position about vesting territorial communities with the powers to independently determine their administrative centres and to limit the powers of the Cabinet of Ministers to introduce such territorial changes for the period until the local elections of 25 October 2020. AUC pointed to the lack of legislation, which would regulate changing, establishing and liquidating administrative and territorial units.

AUC also criticised the procedure of liquidation of the old rayons and establishment of the new ones. As an example, it pointed that while the methodology required that a rayon should have at least 150 thousand persons, 36 established rayons have less than 150 thousand inhabitants. According to AUC, the disproportion in terms of population between rayons with the minimum and maximum number of residents is 60 times (the smallest rayon (Rakhiv rayon) has 30 thousand inhabitants, while the biggest rayon (Kharkiv rayon) – 1.8 million). AUC underlined that prior to the reform this disproportion amounted to 30 times.

201. The rapporteurs consider that the consultation procedures have taken place within the framework of the territorial reform in Ukraine. They also remind that under Article 5 of the Charter domestic authorities are not obliged to follow proposals made by local governments. However, in the opinion of the rapporteurs, local communities or their associations did not always have a real possibility to express their views at a time where influence over amalgamation decisions and their different aspects could be exerted and the consultation should be not only of formal or symbolic nature. The rapporteurs therefore conclude that Article 5 is only partially respected in Ukraine. They would encourage the Ukrainian authorities to strengthen cooperation and dialogue with local authorities and their associations, in particular on the sensitive issue of changing local authorities' borders.

### 3.5 Article 6 – Appropriate administrative structures and resources

**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.

#### 3.5.1 Article 6.1

202. This paragraph states that local authorities have the discretion to determine their own internal administrative structures or organisation. The power to organise themselves is then a part of the autonomy enjoyed by local entities (self-organisation power). This discretion is not absolute but has to respect the general

statutory framework on governmental organisation. The ultimate goal of the paragraph is to safeguard local autonomy by allowing local authorities to create such an administrative internal structure and organisation that enables them to meet the various needs of the local residents and provide a full range of public services.

203. The self-organising power of local entities must be broad, and it should include not only the power to decide the internal local organisation, but also the power to establish independent bodies such as local companies or agencies for the better delivery of local services. Local authorities should also have discretion to establish territorial deconcentrated units and structures (such as municipal districts) in order to ensure the best delivery of their responsibilities.[79]

204. In Ukraine, local authorities do have the power to organise the structures of their administrative departments. According to the Law on Local Self-Government in Ukraine (Article 26, paragraphs 5 and 6), the village, settlement and city councils decide exclusively at their plenary meetings on the proposals of the village, settlement or city head: about the structure of the council's executive bodies, the general number of the council's personnel and executive bodies, and also about expenditures for their maintenance and about the formation of other executive bodies of the council.

205. According to Article 140, paragraph 5, of the constitution, city councils have the power to organise "the administration of city districts", while Article 140, paragraph 6 allows village, settlement and city councils to create "popular self-organisation bodies" (also provided in Article 14 of the Law on Local Self-Government).

206. Finally, Article 143 provides that territorial communities of a village, settlement and city, directly or through the bodies of local self-government established by them, "establish, reorganise and liquidate communal enterprises, organisations and institutions, and also exercise control over their activity".

207. Local government associations in Ukraine have complained about the "overly centralised regulation of local government matters" and even claimed that "all key issues are regulated through legislation, while community charters play a purely decorative role". Detailed domestic legislation on organisational matters of local government is a common phenomenon in many European countries. However, the rapporteurs gained the impression that local governments, apart those smaller authorities who are deprived of the necessary resources, do have the ability to make their own organisational choices in many aspects. Therefore, they share the opinion that Article 6, paragraph 1, is respected in Ukraine.

### 3.5.2 Article 6.2

208. With due respect to the general laws and regulations on civil service, local authorities should have the autonomy to determine in particular the conditions of service of their own employees and to establish a sound and efficient personnel policy, also offering sufficient training and career opportunities. Local authorities should have the ability to attract, recruit and maintain qualified administrative staff. Naturally, this ability will largely depend, however, on the size and resources of each local entity.[80]

209. The Congress has noted in its monitoring exercises that in many countries the national and/or regional authorities do regulate in a comprehensive way the status of local government staff, thus limiting the discretion of local authorities. Also, in Ukraine, local government associations have complained about domestic laws and government regulations that restrict the activities of local governments in terms of selecting and evaluating staff, as well in terms of offering adequate remuneration.

210. But the most important problem in this context is not the legal restrictions but the lack of necessary staff. Local government officials emphasised the weak professional skills of many staff members, especially in the newly established ATCs. Apart from the big cities, it is extremely hard for local authorities to attract specialist quality staff. Another problematic aspect is the absence of an efficient, reliable and easily accessible system for training, mainly because relevant experience and necessary resources are still missing.

211. Therefore, the rapporteurs conclude that the requirements of Article 6, paragraph 2, are only partly satisfied in Ukraine.

79. Ibid.
80. Ibid.

### 3.6 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. |

#### 3.6.1 Article 7.1

212. Local authorities are required to provide all elected representative with the facilities, equipment and technical support needed to carry out their tasks. This has to be done irrespective of their political affiliation; moreover, elected local politicians should have access to training programmes on their role, status, duties and limitations.[81]

213. Elected representatives should not be prevented by the action of a third party from carrying out their functions. For instance, they should be protected by law against threats from social media or against infringements of their privacy. Another example could be the laws that favour the "judicialisation" of local politics, or where local elected representatives are *de facto* threatened with the prospect of being prosecuted even on trivial charges. In this connection, the fight against corruption should be balanced against the need to ensure that local politicians are not unduly and arbitrarily threatened by the prospect of prosecutions.[82]

214. In the previous report and in the pertinent recommendation 348/2013 (7.b.) on Ukraine[83] it has been pointed out that some dismissals of mayors had not been followed by elections and their posts remained vacant. This time, local interlocutors highlighted the practice of early elections, claiming that their scheduling remains dependent on political factors. According to the Constitution of Ukraine, the scheduling of early elections belongs to the competence of the Parliament (Article 85, paragraph 30), which, according to these allegations, tends to instrumentalise this discretion on political grounds.

215. In this way, the term of office of some politically uncomfortable mayors would end prematurely and sometimes even these early elections would not take place. As an example, it has been mentioned that early mayoral elections in Lutsk have not been scheduled since 2017. In order to replace this mechanism used for scheduling early local elections, it would be necessary to revisit the powers of the Verkhovna Rada and amend the constitution. Impeachment of elected mayors and the following early elections should be in the hands of the judicial power.

216. Interlocutors from local government associations expressed the opinion that the early termination of the office of a directly elected local body or directly elected local representatives, especially mayors, can only be considered in rare exceptional cases at most, and only under special substantive and procedural conditions (for example, only after holding a referendum with a high quorum) to avoid political misuse. This is necessary as a precautionary measure to ensure that the state does not undermine the democratic vote of the citizens.

217. Another problematic aspect concerning the status and the free mandate of elected representatives is the legal possibility to recall mayors and councillors. Article 71 of the Ukrainian Constitution stipulates that elections to bodies of local self-government are free and held on the basis of universal, equal and direct suffrage, by secret ballot. In addition, Article 141, paragraph 1, explicitly stipulates that municipal elections take place through secret ballot and deputies are elected for a five-year term.

218. In 2015, amendments were made to the laws "On Local Self-Government in Ukraine" and "On the Status of Local Council Members", which defined the procedure for recalling the village, town or city mayor or/and members of a local and regional elected government body upon the people's initiative. Recalling of the elected official takes place after the group behind the initiative has collected a certain number of signatures of voters.

81. Group of Independent Experts on the European Charter of Local Self-Government, Congress commentary on the explanatory report, paragraph 110.
82. Ibid, paragraph 112.
83. Ibid.

219. It is clear that the recall procedure prescribed by the legal frameworks (Law on the Status of Local Councillors, Articles 37-48, and the Law on Local Self-Government, Articles 78 and 79) does not protect the election results, and can be used to exercise direct influence over voters.

220. The European Commission for Democracy through Law (the "Venice Commission" of the Council of Europe), in a 2019 report on the recall of mayors and local elected representatives,[84] considered that the recall vote of directly elected mayors was consistent with international standards, although it pointed out its risks and dangers. The Venice Commission considered the recall of mayors as "an acceptable, though exceptional, tool for political accountability". This mechanism should only be used "when it is provided for by the national or regional law, if it is regulated very carefully and coupled with adequate and effective procedural safeguards to prevent its misuse".

221. The report clearly pointed out a number of key conditions that should be fulfilled by recall referendums: (a) the recall should be permitted only in respect of mayors who are directly elected, when and if it is prescribed by the constitution or the national/regional law; (b) the recall should be used as an exceptional tool and national or regional legislation should regulate it very carefully and only as a complement to other democratic mechanisms available in a representative system; (c) legislation should provide for adequate procedural safeguards, ensuring transparency, legitimacy and legality of the recall process; it should also clearly identify those taking part in the process and define sufficiently high thresholds for initiating (number of signatures or of members of the local council) and validating the recall; provide for a clear and reasonable time frame; and for judicial review of the different steps and conditions in the process".[85]

222. By contrast, the possibility of a recall referendum against the members of local councils or assemblies should not be admitted, taking into account the right to the free exercise of the functions of local elected representatives (Article 7.1). The Venice Commission, in the above-mentioned report, pointed out that the principle of prohibition of the imperative mandate is relevant for individual members of local councils, even in countries in which this principle is normally considered to be applicable only to members of parliament.[86]

223. The Office of the President of Ukraine has noted that the issue of recall is still highly politicised in Ukraine. In any case, the opinion of the Venice Commission would be seriously taken into consideration. Moreover, the gradual elimination of the above-mentioned procedures in order to harmonise Ukrainian legislation on local self-government with the European standards of local democracy would be considered as an advisable option.

224. There is no doubt that the provisions of the Ukrainian law providing for the recall of councillors violate the principle of free mandate and Article 7, paragraph 1, of the Charter. Also, the provisions for recall of mayors appear to be problematic since they do not fulfil the requirements set by the Venice Commission in order to be accepted as compatible, in exceptional cases, with this provision of the Charter. Therefore, Ukraine does not comply with Article 7, paragraph 1, of the Charter.

### 3.6.2 Article 7.2

225. This paragraph again refers to the conditions of office of local elected representatives and focuses on the financial aspect of their work. The aim of the paragraph is to ensure that local elected representatives receive "appropriate financial compensation" and to avoid the conditions of office preventing, limiting or even excluding potential local candidates from standing for office because of financial considerations.[87]

226. Concerning elective office, a distinction can be drawn between three degrees of commitment:

- elective duties considered as a full-time responsibility (engagement in another occupational activity at the same time is barely possible);
- duties considered as a part-time responsibility (40%, half time, etc.);
- political duties that constitute an ancillary activity (not generally affecting the main occupational activity); the elected representative can keep a full-time job.

227. Of course, the distinction between these three categories does not reflect the practice in all countries: Some consider that any elective office, even if it involves only a few hours' work a month, is a part-time job.

84. European Commission for Democracy Through Law (Venice Commission), Report on the Recall of Mayors and Local Elected Representatives, CDL-AD(2019)011, Opinion No. 910 / 2017, Strasbourg, 24 June 2019, p. 21 f.
85. Ibid.
86. Ibid.
87. Group of Independent Experts on the European Charter of Local Self-Government, Congress commentary on the explanatory report, paragraph 113.

In many countries, full-time engagement is often implied only for members of parliament since engagements are usually not so demanding for local councillors. While a mayor (and in some cases one or several deputy mayors) can possibly be considered as a full-time responsibility, a substantial proportion of the local elected councillors hold part-time responsibilities, or their political duties constitute an ancillary activity.[88]

228. In Ukraine, Article 6 of the Law "On the Status of Local Council Members" seems to follow a similar pattern: According to paragraph 2:

> A local councillor elected to the position of a secretary of a village, settlement or city council, a mayor or a deputy mayor of a rayon, oblast or city rayon council shall work at the respective council on a permanent basis and may not combine his official functions with any other work ..., perform entrepreneurial activities or obtain profit from it, unless otherwise provided by law.

Paragraph 3 states, "Under a resolution of an oblast, Kyiv or Sevastopol city councils, a councillor elected to the position of a chairperson of a budget standing committee may work at such council on a permanent basis". For the rest of the councillors, paragraph 1 stipulates that "a local councillor shall exercise his powers without discontinuing his entrepreneurial or official activities".

229. According to Article 7, paragraph 2, of the Charter, conditions of office of local elected representatives shall allow for "appropriate financial compensation" as well as, where appropriate, "compensation for loss of earnings or remuneration for work done and corresponding social protection". Article 32, paragraph 2, of the Law on "On the Status of Local Council Members" stipulates that "…in the event of [the] exercise of [a] councillor's powers during working hours, a local councillor shall be reimbursed … the average salary and other expenses…".

230. Article 33, paragraph 1, provides that:

> in the event of a local councillor's election to an elected position in a council, in which he works on a permanent basis, an employment contract with him at the previous place of work shall be suspended … A fixed-term employment contract shall be executed with an employee hired for a job (position) previously performed (occupied) by a local councillor; this contract shall be terminated in the event of such local councillor's return to work.

Concerning simple participation in sessions and meetings, each councillor is exempted "from discharge of production or official duties" (Article 32, paragraph 1).

231. According to Article 34 of the Law "On the Status of Local Council Members", "a local councillor shall be entitled, within the territory of the respective council, to free travel on rail, road and water transport, irrespective of the patterns of ownership, as well as on all types of urban passenger transport (except taxi)".

232. In view of the aforementioned provisions, the rapporteurs conclude that Ukraine complies with Article 7, paragraph 2.

### 3.6.3 Article 7.3

233. Restrictions on holding elected office should be as limited as possible and set out in national laws, which means they apply to all levels of government. The main restrictions on holding office should be related to potential conflicts of interest or involve a commitment that prevents the local representative from discharging his or her duties for the local authority in a professional way.[89]

234. Article 7 of the Law "On the Status of Local Council Members" defines cases of incompatibility of the status of a local councillor with positions and activities: According to paragraph 1, a "local councillor occupying the position of a head of a local executive authority or other position that is subject to the requirements of the Constitution (254k/96-VR) and laws of Ukraine regarding the restrictions on dual position-holding" may not combine this official activity with the position of a village, settlement or city mayor, secretary of a village, settlement or city council, mayor or deputy mayor of a city rayon, rayon or oblast council, as well as with other work on a permanent basis in councils, their executive bodies or offices. Furthermore, according to paragraph 3, a "local councillor may not hold another representative mandate".

88. Council of Europe, Study on the Ukrainian Law on the Status of Local Councillors, Strasbourg 2018, pp. 17-18.
89. Group of Independent Experts on the European Charter of Local Self-Government, Congress commentary on the explanatory report paragraph 120.

235. These provisions are in accordance with the spirit of Resolution 60/1999 and Article 11 of the Congress Code of Conduct,[90] and, furthermore, with the expressed opinion and suggestion of the Committee on Local and Regional Democracy, stressing that "simultaneous holding of more than two direct elective offices at different levels is not desirable ... and should not, in principle be practised". On the other hand, it should be considered whether incompatibilities should be introduced for persons employed by the municipality or by a corporate entity or foundation under the control of the municipality who are in a senior position within the professional administration. These persons should also not be eligible for election as local councillors unless this employment relationship ends before the local councillors' term begins.[91]

236. It should be noted that there is a general rule in paragraph 2 of Article 7 of the Law "On the Status of Local Council Members" that "a local councillor may not use his councillor's mandate for purposes not associated with a councillor's activity", however, the issues of declaration and conflict of interests or the prohibiting of holding employment contracts with some types of companies after the expiration of the elective mandate are also not dealt with in this law. Therefore, the opinion of the Committee on Local and Regional Democracy recommended taking a stricter approach, stipulating for example that elected representatives should declare their assets before and after their term of office, and, furthermore, that they should provide information throughout their term of office about any personal and in particular any financial interests connected with the business of the local or regional authority (see Article 17 of the Code of Conduct about the declaration of interests).

237. According to the Ukrainian Law on Prevention of Corruption, a violation occurs in decision making when a conflict of interest has not been properly reported and resolved. Private interest is not limited to financial or material interests; nepotism and patronage are considered as subtypes of conflict of interest and they are regulated by the same legislation. According to Article 59-1 of the Law on Local Self-Government in Ukraine, special permanent commissions of the local councils are responsible for consulting, monitoring and controlling the prevention and regulation of conflict of interests. When a real conflict of interest is revealed, the National Agency on Corruption Prevention exhorts action from the authority involved. If the conflict of interest is not resolved within 10 days, the National Agency on Corruption Prevention reports an administrative violation. According to the Article 172.7 of the Administrative Code of Ukraine, in the case of real conflict of interest the sanction is a monetary fine and the deprivation of the right to hold certain activities for one year.

226. Information on corruption-related offences (such as conflict of interest) is collected in a single open database of individuals involved in corruption, which damages the image of the perpetrator.

238. In view of the legal provisions and their discussions with stakeholders the rapporteurs conclude that the requirements of Article 7, paragraph 3, are respected in Ukraine.

### 3.7 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.

#### 3.7.1 Article 8.1

239. In its seminal 2019 recommendation on supervision of local authorities' activities, the Committee of Ministers set out three different types of supervision: administrative (including the supervision of financial acts), financial (with the aim to examine a local authority financial position, records, accounts and arrangements) and democratic (by citizens and elected representatives), only the first of which falls within the ambit of Article 8 of the Charter. It does not apply to any form of supervision or control exercised by an ombudsman, criminal prosecutors or the legislature. The existence of administrative supervision is justified by the need to comply

90. "Code of conduct for the political integrity of local and regional elected representatives" prepared by the Council of Europe Congress of Local and Regional Authorities (CLRA).
91. Council of Europe, Study on the Ukrainian Law on the Status of Local Councillors, Strasbourg 2018, p. 17.

"with the principles of the rule of law and with the defined roles of various public authorities, as well as the protection of citizens' rights and the effective management of public property".[92]

240. The Explanatory Report to the Charter limits the subject matter of Article 8 to the supervision that is carried out "by other levels of government", that is to say, by central authorities or bodies (line ministries, the Ministry of the Interior, etc.) or regional authorities. As for the matters that can be "supervised", the Charter refers to the broad concept of activities, which covers all types of plans, projects, rules, decisions or strategies approved at local level.

241. The Charter establishes an important principle here in the area of intergovernmental supervision of local authorities: any form of such supervision must be provided for by the constitution or by statute, i.e., the Charter introduces the legality principle into the supervision of a local authority. Supervision cannot be improvised or ordered by the higher level without a clear legal basis. At the same time, supervisory authorities must strictly comply with the procedures established by law for the exercise of such supervision (time, manner, competence, etc.).[93]

242. According to Article 144, paragraph 1, of the constitution, bodies of local self-government, within the limits of authority determined by law, adopt decisions that are mandatory for execution throughout the respective territory. This means that decisions of local government bodies do not, in principle, require prior approval or *ex ante* supervision by state authorities.

243. The second paragraph of the same article provides that decisions of bodies of local self-government, for reasons of non-conformity with the constitution or the laws of Ukraine, are suspended by the procedure established by law with a simultaneous appeal to a court.

244. Article 20 of the Law on Local Self-Government in Ukraine states, in a general sense 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.

245. At present, there is a legislative gap concerning administrative supervision of local government on decisions about their own affairs. Until recently, the powers of state oversight of the compliance of decisions of local self-government bodies with the constitution and laws of Ukraine, and the suspension of such decisions, were exercised in a peculiar way by the prosecutor's office within the framework of its function as a guardian of obedience of the laws. Since the prosecutor's office has been deprived of this responsibility for local governments, the state does not control the legality of local self-government statutes and decisions.

246. As already analysed in this report, draft constitutional amendments are supposed to fill that gap through the institute of prefects (uryadnyks), who will have the authority to supervise the compliance of local government bodies with the constitution and laws of Ukraine. However, until the constitutional amendments enter into force, the problem will remain unsolved. In the situation of accelerated decentralisation and transfer of new powers and resources to local self-government, the latter can lead to violations of the rights and interests of the local population and/or the state.

247. On the other hand, the decisions of local self-government bodies and officials concerning local affairs are currently the subject of state supervision on an ad hoc basis and in a fragmented way by more than 10 state executive bodies, which appears problematic in particular given the unclear distinction between own and delegated tasks.

248. Citizens affected by unlawful practices of local authorities can appeal to the courts or address the Verkhovna Rada Commissioner for Human Rights.

92. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities (adopted by the Committee of Ministers on 4 April 2019 at the 1343rd meeting of the Ministers' Deputies). This recommendation includes an appendix with guidelines on the improvement of the systems of supervision of local authorities' activities.
93. Group of Independent Experts on the European Charter of Local Self-Government, Congress commentary on the explanatory report, paragraph 128.

249. Until a new, consolidated system of administrative supervision is introduced and successfully implemented, the situation in Ukraine is not a reasonable one. On the other hand, this does not constitute per se a violation of the first paragraph of the Charter, since a consolidated supervision system is a desired aim but not an explicit obligation under Article 8, paragraph 1, of the Charter.

### 3.7.2 Article 8.2

250. The general rule of the Charter is that supervision will ("normally") aim only at ensuring compliance with the law and with constitutional principles. It thus proclaims a general preference for checks on legality over checks on expediency, the former being the only checks that in general comply with the Charter. Checks on expediency are not prohibited by the Charter but are severely restricted, for they are held to be in contradiction with the very meaning of local self-government. Administrative supervision based on expediency should be limited to the tasks that higher-level authorities have delegated to local authorities. Therefore, the type of local power is highly relevant for determining the nature and scope of the administrative supervision that may be exercised by higher administrative bodies in conformity with the Charter.[94]

251. According to the last paragraph of Article 143 of the Ukrainian Constitution, "Bodies of local self-government, on issues of their exercise of powers of bodies of executive power, are under the control of the respective bodies of executive power". The constitution uses the term "control" instead of "supervision" and therefore seems to include expediency control.

252. Such supervision is exercised, in some cases, by regional state administrations over delegated state authorities. At the same time, in respect of certain delegated powers exercised by local self-government bodies, there is a duplication of powers of the central executive bodies and local state administrations in ensuring state control over their implementation. Local interlocutors have stressed the fact that "more than 10 state executive bodies (including the State Geocadastre, State Inspectorate, State Construction Inspectorate, Ministry of Internal Affairs and State Emergency Service) supervise and control decisions of local self-government bodies and their officials".

253. Given the fact that consultations are currently under way to amend the Constitution of Ukraine, and in particular to determine the legal status of the prefect/uryandyk and his supervisory powers, it seems more appropriate to regulate the administrative oversight procedure by a separate law. Local government associations are developing a model involving a wide circle of stakeholders in order to "balance the autonomy of local self-government bodies and observance of national interests, in particular in the matter of ensuring the state's territorial integrity".

254. During the consultation procedure, the Ministry of Communities and Territories Development pointed out that the proposed amendments to the laws "On Local Self-Government in Ukraine" and "On Local State Administrations" clearly define that own competences shall be controlled exclusively on issues of legality and only delegated competences shall be controlled on issues of efficiency and expediency.

255. Once more, it is obvious that the current situation is not a reasonable one. The multiplication of state controls, including expediency by different authorities, creates a situation of uncertainty and unpredictability that is not in line with the Charter, which regards expediency controls as an exception that should be systematically regulated in order to ensure the unity of public policy and the implementation of norms. For this reason, the rapporteurs conclude that Ukraine does not comply with the second paragraph of Article 8.

### 3.7.3 Article 8.3

256. This provision enshrines the principle of proportionality in the administrative supervision of local authorities' activities by higher-tier bodies. This principle stands here for the premise that the intervention of the supervisory authority should be proportionate to the importance of the interests it intends to protect. In this connection, in 2019, the Committee of Ministers recommended that the governments of member states adopt appropriate measures to "put in place an appropriate legal, institutional and regulatory framework for supervision of local authorities' activities which is proportionate, in law and in practice, to the interests which it is intended to protect".[95]

94. Group of Independent Experts on the European Charter of Local Self-Government, Congress commentary on the explanatory report, paragraphs 132,134.
95. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities (adopted by the Committee of Ministers on 4 April 2019 at the 1343rd meeting of the Ministers' Deputies).

257. Apparently, this principle is applicable to any form of intergovernmental supervision, whether that includes a priori or a posteriori checks on legality or expediency. It is a generally worded principle that can only be tested in the precise context of an actual dispute, but it could be explained in simple terms by pointing out that in ensuring compliance with the law, the regional/state body should not "use a sledgehammer to crack a nut".

258. Consequently, under the principle of proportionality, the regional or state body should intervene only to the extent necessary, taking into account the relevance of the public interest at stake, or the seriousness of the legal violation allegedly committed by the local authority. A system under which local authorities must obtain prior approval from regional or state bodies for minor or even trivial decisions would not comply with the principle of proportionality. Similarly, in the case of an infringement identified *a posteriori*, the supervisory measures must be proportionate to the seriousness of the infringement. Not every breach of the rules can justify, for example, the revocation of a decision.

259. Under the previous legal framework, the role and the practice of the prosecutor's office have, according to local interlocutors, been violating the principle of proportionality in many cases. However, since the corresponding responsibilities of the prosecutor do not exist anymore and since the new supervision system provided by the constitutional amendments has not been approved yet and a consolidated system of administrative supervision does not exist, for the time being, the rapporteurs can only come to the conclusion that the last paragraph of Article 8 is not violated in Ukraine. However, the lack of the legal framework and the ad hoc and fragmentary supervision exercised by the state executive bodies carries a high risk of violation of Article 8.3.

### 3.8 Article 9 – Financial resources

**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.

#### 3.8.1 Article 9.1

260. This paragraph establishes two basic principles in the area of finance: first, local authorities should have their own financial resources; second, they should be free to decide how to spend those resources.

261. As far as the first dimension is concerned, local authorities should be "entitled" to their own resources. This is not just an expectation but a genuine "right" that is not absolute but has to be exercised "within national economic policy". The wording "adequate financial resources" incorporates the requirement to ensure proportionality between functions of local authorities and the funding available.

262. The second dimension is the freedom of local authorities to dispose of (at least) their "own resources" within the framework of their powers. Any limits and restrictions imposed by higher authorities on local authorities should be specified and justified and aim at ensuring macroeconomic stability and sound financial management.[96]

96. Group of Independent Experts on the European Charter of Local Self-Government, Congress commentary on the explanatory report, paragraph 147.

263. Regarding the financial base of local self-government, the Constitution of Ukraine makes the following statements:

> Article 142
> The material and financial basis for local self-government is movable and immovable property, revenues of local budgets, other funds, land, natural resources owned by territorial communities of villages, settlements, cities, city districts, and also objects of their common property that are managed by district and oblast councils.
> … The State participates in the formation of revenues of the budget of local self-government and financially supports local self-government …
>
> Article 143
> Territorial communities of a village, settlement and city, directly or through the bodies of local self-government established by them, manage the property that is in communal ownership; …

264. The Budget and Tax Codes of Ukraine were amended in 2015 (fiscal decentralisation) in order to strengthen the financial autonomy of local self-government. The main beneficiaries of the fiscal decentralisation are the amalgamated communities. Over the four previous years, local budget revenues, excluding transfers, have increased from UAH 68.6 billion to UAH 275 billion. In 2019, local budget revenues (excluding interbudget transfers) increased by 14.1% and capital expenditures by 9.4% (by an inflation rate of 4.1%. As already analysed in part 3.1 of this report, it is obvious that fiscal decentralisation reform has ameliorated the financial situation of many local self-governments in Ukraine.

265. An important basis for financial autonomy of local self-government, and also for some local policies concerning urban and development planning, social housing, environmental protection etc., is the municipal property. The transfer of former state property to municipalities has been a major challenge in all transition countries during the transition period and beyond.

266. In Ukraine, it seems that in some cases a tendency prevails that favours privatisation over municipalisation of former state property. During the monitoring visit, representatives of the Fastiv District Council complained about an alleged “abuse of authority by the State Geocadastre officials at different levels in terms of land management”. More precisely, the position of the respective village council had not been taken into account and state land ownership moved into private hands, which represents unreasonable land use (without taking into account the interests of society, territorial communities and the state). In addition, the district council had repeatedly appealed against the rapid opening of the land market and emphasised the need for a set of measures to prepare such a crucial step during the moratorium, as premature privatisation would lead to the destabilisation of the agrarian sector, which in turn would cause irreparable damage to the Ukrainian economy.

267. Concerning the spending discretion of local government bodies according to the first paragraph of Article 9, it should be noted that in view of the fact that the biggest part of local government revenue derives from grants, and also in view of the need for prudent management, a complex system of financial oversight has been developed. More precisely, financial oversight is performed by the following state authorities:

- the Ministry of Finance (methodology for local budget planning and reporting);
- the State Treasury Service (cash execution of local budgets);
- oblast and rayon state administrations (preparation and implementation of oblast and rayon budgets);
- the State Audit Service (state oversight of local budgets);
- the Accounting Chamber (state oversight of local budgets).

268. Currently, financial oversight covers all stages of planning, implementation and evaluation of local budgets to the maximum extent. Such a system has many shortcomings and needs to be simplified and improved. According to some interlocutors, the system of financial oversight has been repeatedly used to curtail local government discretion, for example to block disbursements from local budgets by the Treasury without proper legal justification.

269. Mainly due to deficiencies concerning the formation of municipal property and the complex system of financial oversight, the rapporteurs conclude that Ukraine partially complies with the first paragraph of Article 9.

### 3.8.2 Article 9.2

270. This paragraph enshrines the “principle of commensurability” of local authorities’ financial resources. This means that the resources available to local authorities should be sufficient and commensurate with their functions and tasks. It does not mean that all these tasks should be financed with their own revenues. This paragraph states that the revenues and tasks of local authorities should be balanced to ensure that the financial resources available to those authorities are satisfactory in comparison to the tasks assigned to them by law.[97]

271. According to the last paragraph of Article 142 of the Ukrainian Constitution, “Expenditures of bodies of local self-government that arise from the decisions of bodies of state power are compensated by the state”. Article 143, paragraph 3, stipulates that the state finances the exercise of tasks of executive power that are assigned by law to bodies of local self-government “in full or through the allocation of certain national taxes to the local budget, by the procedure established by law”, and “transfers the relevant objects of state property to bodies of local self-government”.

272. As much as the principles of adequacy and compensation for expenses generated by other authorities’ decisions are helpful for ensuring a good level of protection of local authorities, they would not be operational without further legislative qualification (or more exactly they could lead to endless legal and constitutional debates).

273. However, according to complaints expressed by the Association of Ukrainian Cities, the central government would often revisit the financial resources for the delegated tasks to reduce them. For example, interbudget transfers to education and health care in 2017 were limited only to cover salary costs, while the expenditures for the maintenance of relevant buildings and equipment were taken from local budgets. In 2016, the state transferred the expenditure category of providing urban public transportation services to privileged citizens without the proper financial resources.

274. The same association admitted that amalgamation of territorial communities significantly increased their income base compared to the budgets of local councils that were parts of these ATCs. However, despite the allocation of additional sources of income and the provision of medical, educational and other subventions from the state budget for the implementation of state programmes, the fulfilment of the delegated powers could not be fully ensured.

275. Therefore, the rapporteurs conclude that Ukraine only partially meets the requirements of the second paragraph of Article 9.

### 3.8.3 Article 9.3

276. According to Article 143 of the constitution, “territorial communities of a village, settlement and city, directly or through the bodies of local self-government established by them … establish local taxes and levies in accordance with the law …” Article 143 provides a constitutional basis for the power of first-tier local self-governments to establish local taxes and levies in accordance with the law.

277. According to information provided by the Association of Ukrainian Cities (AUC), about a quarter of local government financial resources are derived from local taxes and charges. Local governments have the authority to set their rates within the limits defined by the Tax Code. But this does not apply to all kinds of local taxes. For example, the amount of the transportation tax or flat tax is established by the Tax Code of Ukraine.

278. It is a fact that financial resources of local governments consist only to a relatively small extent of their own revenues. According to information provided by foreign observers, the possibility of determining the rate exists in principle but is limited in practice. The expectation of the state is that all local governments fully realise their revenue possibilities. In addition, local authorities do not yet have their own tax offices, so they do not collect taxes and fees themselves. Instead, state authorities perform this task for them.

279. The reform has been strengthening the capacities of some local governments who can take advantage of the fiscal decentralisation. The capacities of local authorities deviate considerably according to some crucial aspects. The cities (cities at the regional level) and the significant number of ATCs appear to be successful in generating their revenue since they are the centres of economic activity (possibility to collect the lucrative

97. Ibid.

property tax, which includes the real estate, land and vehicle taxes). In contrast, there are many municipalities that are heavily dependent on state financial support.

280. According to data provided by the ACU, the analysis of the structure of local budget revenues in 2016 and 2017 has revealed, once more, their dependence on transfers from the state budget (more than 50% of total revenue), which would not be in line with the European trends and the standards of the Charter of Local Self-Government in terms of allocation to local self-government authorities the freedom to pursue their own policies. In many European countries, the share of state transfers is less than 50%. (France 23%, Sweden 37%, Poland 29.2%). It is therefore obvious that the base of local taxes should be enlarged and should become dynamic.

281. Especially in view of the high share of state grants, the rapporteurs conclude that Ukraine partially fulfils the requirements of the third paragraph of Article 9.

### 3.8.4 Article 9.4

282. This paragraph refers to two important features of the financial systems on which local authorities' resources are based: they must be diversified and they must be "buoyant". At first, the diversification of income sources is crucial if local authorities are to maintain their autonomy during fluctuations in economic cycles. Consequently, local authorities' finances should not be based solely on taxes or transfers and should be bolstered by all possible sources of local income: transfers, local taxes, charges, fees, profits under private law, interest on bank accounts and deposits, penalties and fines, sales of property or goods and services offered to the private sector, etc.

283. The second aspect mentioned in paragraph 4 of Article 9 is that the systems of local finance should be "buoyant". This means that they should allow local finances to rise to meet the costs of the delivery of services, i.e. local finances should be able to adapt to new circumstances, needs and macroeconomic scenarios and be sufficient to cover service delivery. Therefore, transfers from regional or national bodies should be updated and possibly increased over the years in order to take account of price increases, or factors involved in the delivery of services. And local authorities should also be allowed to increase their tax rates where such a decision is necessary owing to inflation. Accordingly, any delegation of tasks that does not indicate the source of funding to meet the cost of the new responsibility is not compatible with the principle of buoyancy.[98]

284. According to the analysis of local government finance already presented in part 3.1.2 of this report suggesting that local government finance seems to reach an acceptable level of diversification (even though the question of adequate municipal property remains open, as already shown), the system of local finance cannot be characterised as buoyant, especially concerning the revenue that should cover the costs of additional tasks that were delegated to local authorities (see comments in paragraph 2). Therefore, the rapporteurs conclude that Ukraine partially complies with Article 9, paragraph 4.

### 3.8.5 Article 9.5

285. This provision addresses the question of the financial situation of municipalities that are financially disadvantaged due to their being located in economically or geographically weak areas (transition, mountain or island regions), or simply because they are too small to obtain the amount of resources needed to perform their tasks or they must bear special burdens linked for instance to high social expenditures.

286. Article 9.5 introduces a rule for the protection of financially weaker local authorities. The Charter mentions financial equalisation as the conventional method of assistance for weaker local authorities, as this is a well-known redistribution mechanism in the context of fiscal federalism. According to the OECD, "fiscal equalisation is a transfer of fiscal resources across jurisdictions with the aim of offsetting differences in revenue raising capacity or public service cost".[99]

287. Without an equalisation system, it would not be possible to ensure "balanced and sustainable socio-economic development of territories", as Article 132 of the Ukrainian Constitution requires. There is no country in Europe where no municipality receives any transfer (grants or subventions) and no country where there is no element of equalisation introduced into the local finance system.

98. Group of Independent Experts on the European Charter of Local Self-Government, Congress commentary on the explanatory report, paragraph 164.
99. OECD Network on Fiscal Relations Across Levels of Government: Fiscal Equalisation in OECD countries, 2007.

288. The existing financial equalisation system in Ukraine appears to be weak and requires systematic corrections.

- Vertical financial equalisation is very weak; only a small share of total state revenues is allocated to this. Therefore, there is a need to strengthen the vertical fiscal equalisation system on a permanent comprehensive basis. A “self-balancing system” (in which the financial equalisation is exclusively or to a large extent fed by the contributions of the richer local authorities) does not seem to be politically sustainable in the long run.

- The local authorities with above-average revenues are the main contributors to the financial equalisation (horizontal equalisation). The average income of the municipalities is calculated by taking an overall view of the districts, Cities of Oblast Significance (COS) and ATCs. As a result, the COS and ATCs pay in the largest share but receive only a small amount in return. In contrast, the districts pay in almost nothing and have the greatest benefit. This weakens rather than strengthens the basic level of local self-government.

289. Until a new, consolidated and efficient system of equalisation is introduced, Ukraine partially complies with the fifth paragraph of Article 9.

### 3.8.6 Article 9.6

290. This paragraph refers to a general principle of consultation, as enshrined at Article 4.6. In this case, consultation is required on the way in which redistributed resources are to be allocated to local authorities by other levels of government. No distinction is made between equalisation funds or other grants, or between general and earmarked grants. The legal form of the allocation decision is not specified. It may be an act of parliament, a decree, a ministerial order or a decision by another body belonging to a higher level of government (for example, a regional or provincial assembly or executive committee).

291. The usual bodies covered by this consultation requirement are the state or regional authorities in countries where local authority finances partly or totally depend on the regions. The method of allocating redistributed resources includes temporal aspects (for instance, the timing of financial transfers) and substantive aspects such as the different types and degrees of importance of criteria for such allocation. Therefore, this consultation is not merely a compulsory procedure that has to take place in a timely manner before a final decision is made. It must also cover the manner in which a decision is made and the criteria for doing so, not only the decision itself.[100]

292. Local governments are annually consulted on budget issues (once, before the Ministry of Finance submits the national budget to the CMU). However, the Association of Ukrainian Cities have complained that the Ministry of Finance takes into account very few local government suggestions. An example would be the land fee for mining companies, or for the state-owned UkrZaliznytsya [Ukrainian railway] Company. The lack of substantial consultation would be extremely detrimental since the legislative framework for local government activities would change very often.

293. On the other hand, representatives of the parliament have stressed the fact that representatives of local authorities and their associations are always invited to parliament committees and sub-committees whenever a law affecting local government and especially the finances of local authorities is being examined. Consultations take place at different stages of the legislative process. If a new version of the law is needed or a wider panel of experts is involved, an appropriate working group is formed on the basis of the committee. There are round tables and committee or parliamentary hearings on more systemic issues.

294. The rapporteurs gained the impression that an ordinary and systematic mechanism for timely and substantial consultation of financial matters under the participation of local government associations should be established. They conclude that Ukraine only partially complies with the requirements of Article 9, paragraph 6.

### 3.8.7 Article 9.7

295. This paragraph is concerned with grants to local authorities from higher levels of government. Grants are a key tool for intergovernmental financial assistance. Local authorities receive centrally allocated grants for specific projects as well as general grants (transfers). The allocation of specific grants should be based on

100. Group of Independent Experts on the European Charter of Local Self-Government, Congress commentary on the explanatory report.

objective, transparent criteria justified by spending needs, and criteria for the allocation of general grants should be specified by law to enable local authorities to know in advance how much they are to receive in transfers.[101]

296. According to the Accounting Chamber of Ukraine, the reform of interbudgetary relations in 2017 has already doubled the revenue growth of local budgets (from UAH 232 billion in 2014 to UAH 502 billion in 2017) and that the allocation of more than 90% of transfers from the state to local budgets is in the form of earmarked grants. More specifically, 94% of the total transfers to the local budgets of Ukraine in 2016 and 2017 were "targeted transfers" (subsidies). The share of non-targeted grants was insignificant (6%).

297. This picture was confirmed during the monitoring visit, when the rapporteurs had an insight in the budget of a city where it was obvious the state transfers consisted, to their greatest part, from earmarked grants and grants made up the biggest share of the city's budget.

298. Therefore, the rapporteurs conclude that Ukraine does not comply with Article 9, paragraph 7.

#### 3.8.8 Article 9.8

299. Access to national capital markets is important for local authorities to finance investment projects necessary for the further development of the local area because in many cases the amount of their own "ordinary" resources is not enough. The law may establish requirements, procedures, criteria, limits or ceilings concerning local authorities' financial activities but in any event those standards should not deter them from borrowing on the national capital market or make it extremely difficult in practice.

300. Ukrainian law sets restrictions depending on the category of local governments. Borrowing from international financial organisations is allowed for the Verkhovna Rada of the Autonomous Republic of Crimea, oblast councils and all city councils. The process of local self-government borrowing is controlled by the Ministry of Finance; in particular, the volume and the terms of borrowing, as well as loan guarantees, should be approved by the Ministry of Finance.

301. These restrictions are in accordance with the Charter, which refers to "access" to the national capital market within the limits of the law. Therefore, the rapporteurs conclude that Ukraine complies with Article 9, paragraph 8, of the Charter.

### 3.9 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.

#### 3.9.1 Article 10.1

302. Under Article 10.1 of the Charter, local authorities have a general right to co-operate with one another in order to deliver local services or discharge their responsibilities. Intermunicipal co-operation (or co-operation at other levels of local government) is a fundamental tool for local authorities in terms of delivering services, in view of the fact that many of them are too small or too weak (financially speaking) to deliver all the services they are supposed to or to carry out any meaningful local strategy or policy.[102]

303. According to the second paragraph of Article 141 of the constitution:

> On the basis of agreement, territorial communities of villages, settlements and cities may join objects of communal property as well as budget funds, to implement joint projects or to jointly finance (maintain) communal enterprises, organisations and establishments, and create appropriate bodies and services for this purpose.

101. Ibid, paragraph 178.
102. Ibid, paragraph 189.

304. In 2014, the Verkhovna Rada approved the Law “On Cooperation of the territorial Communities” (No. 1508). As of 10 January 2020, 1 181 local governments had used this mechanism and concluded 530 intermunicipal co-operation agreements. Their main areas are housing and municipal utility services (waste management, water supply and sewerage), urban beautification, fire safety and the social sector.

305. The main fields of interregional co-operation are regional roads maintenance, public passenger transport, environmental issues and sustainable regional development.

306. The rapporteurs conclude that Ukraine complies with Article 10, paragraph 1.

3.9.2 Article 10.2

307. In this paragraph the Charter sets out the right of local authorities to belong to (a) a national association for the protection and promotion of their common interests and (b) an international association of local authorities. On this point, the Charter is unusually categorical: that right “shall be recognised in each State”. This is the only passage in the Charter where this wording is used, which reinforces the directly enforceable nature of the paragraph.

The Association of Ukrainian Cities (AUC) was founded in 1992 with 35 member-municipalities and has the status of All-Ukrainian Association according to the Law of Ukraine on Associations of Local Governments. AUC includes four chambers: Chamber of Big Cities, Chamber of Medium-sized Cities, Chamber of Small Cities, Chamber of Settlements, Villages and ATC’s. Nowadays, AUC unites 905 Ukrainian cities, districts, settlements and villages where more than 85% of Ukrainian urban population lives. It also has a network of 24 regional offices in all “oblasts” of Ukraine. In total, there are more than 90 local government associations in Ukraine. This is an evidence of the voluntary nature of associations and the ample opportunity to set them up. AUC is the representative of Ukraine within the Council of European Municipalities and Regions.

308. The rapporteurs conclude that Ukraine complies with Article 10, paragraph 2.

3.9.3 Article 10.3

309. This paragraph reiterates the right of local authorities to co-operate, but it does so with a specific dimension: local authorities in one country are entitled to co-operate with local authorities in another country, so this paragraph sets out the right to engage in transnational, or transfrontier, co-operation, which is another form of inter-local co-operation.[103]

310. In Ukraine, these activities are carried out within the framework of the Law “On Cross-Border Cooperation”. According to the relevant database of the Association of Ukrainian Cities, 140 Ukrainian cities have 727 twin cities in 58 countries, and about 50 Ukrainian cities are interested in establishing partner relations with foreign cities. The main aim of this co-operation is the deepening of economic, social, scientific, technological, ecological and cultural ties. There are also many other mechanisms of international co-operation and Ukrainian local self-government demonstrates a keen interest in participation in international organisations and networks. The focus for the Ukrainian local authorities is to gain or share experience, best practices and implement joint projects.

311. The rapporteurs conclude that Ukraine complies with Article 10, paragraph 3.

### 3.10 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.

312. This article stresses 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 or by the parliament. “Recourse to a judicial remedy” means access by a local authority to either a properly constituted court of law or an equivalent, independent, statutory body.

103. Ibid.

313. There are the following relevant provisions in the Constitution of Ukraine.

> Article 145
> The rights of local self-government are protected by judicial procedure.
>
> Article 151-1
> The Constitutional Court of Ukraine decides on compliance with the Constitution of Ukraine (constitutionality) of a law of Ukraine upon constitutional complaint of a person alleging that the law of Ukraine applied to render a final court decision in his or her case contravenes the Constitution of Ukraine. A constitutional complaint may be lodged after exhaustion of all other domestic legal remedies.

314. Besides, following Article 4 of the Law of Ukraine "On Local Self-Government in Ukraine", local self-government is carried out on the principles, in particular, of judicial protection of the rights of local self-government. Moreover, according to Article 71, paragraph 4, of the same law:

> bodies and officials of local self-government shall be entitled to legal actions to invalidate acts of local executive authorities, other local self-government bodies, enterprises, institutions and organisations, which limit the rights of territorial communities, powers of bodies and officials of local self-government.

315. Part 2 of Article 46 of the Code of Administrative Proceedings of Ukraine (hereinafter, the "CAP") stipulates that the plaintiffs in administrative cases may be citizens of Ukraine, foreigners or stateless persons, enterprises, institutions, organisations (legal entities) and subjects of power. According to paragraph 7 of Part 1 of Article 4 of the CAP, the subject of power is a public authority, local self-government body, their official or staff, or another entity exercising their law-based public management functions, including the exercise of delegated powers, or granting administrative services.

316. This is also confirmed by the provisions of paragraph 1, Part 1 of Article 19 of the CAP providing that the jurisdiction of administrative courts extends to cases in public-law disputes, in particular, disputes of natural or legal persons with the subject of power to appeal against its decisions, regulations or individual acts, actions or inaction, except when the law provides for a different procedure of judicial review in such disputes. The article also provides for the right of any legal entity – private or public – to apply to an administrative court, unless there is another procedure specifically stipulated by law.

317. Thus, the right of the local self-government bodies and officials to appeal to a court, including a court of administrative jurisdiction, with a claim against another local self-government or state authority challenging their decision, action or inaction for the purpose of protecting the rights and interests of the respective territorial community or the proper performance of their functions is guaranteed by the constitution and laws of Ukraine.

318. It should be noted, however, that the new Law "On the Constitutional Court of Ukraine" of 13 July 2017, No. 2136-VIII, does not provide local governments with the legal capacity to initiate before the Constitutional Court of Ukraine the question of checking laws or other normative acts as to their conformity with the norms of the Constitution of Ukraine. The previous Law of Ukraine "On the Constitutional Court of Ukraine" of 16 October 1996, No. 422/96-BP, provided such an opportunity. In particular, according to the provisions of Article 41 of the law, the subjects of the right to constitutional petition on providing opinions by the Constitutional Court of Ukraine, in accordance with Article 13, paragraph 4, were, in particular, bodies of local self-government.

319. It is noteworthy that with the introduction of the institution of constitutional complaint according to the new Law of Ukraine "On the Constitutional Court of Ukraine" adopted in 2017, such a complaint can be filed by an individual or legal entity of private law. Public-law entities do not belong to the subjects of the right to constitutional complaint under Article 56 of the law.

320. Interlocutors from local government associations have complained that the considerable cost of court fees for consideration of claims related to social security payments established by the state would be a limitation of the right to legal remedy. In several cases, local authorities would take advantage of the assistance from their associations and often have to encourage them to take advantage of their legal possibilities since local governments would rarely bring state authorities to court because they do not trust the impartiality of the judicial system.

321. As an example, they mentioned the case of the Slavuta City Council of the Khmelnytskyi oblast, which filed in 2016 a lawsuit against the Cabinet of Ministers of Ukraine in the District Administrative Court of Kyiv against the lack of action on the part of the Cabinet of Ministers to provide a subvention from the national budget to local budgets for compensation of urban public transport for some categories of citizens. The Association of

Ukrainian Cities, acting on behalf of the Slavuta City Council, joined this litigation and provided legal support. The Kyiv City Administrative Court accepted the claim of the Slavuta City Council and declared the lack of action by the Cabinet of Ministers as unlawful. In this way, local governments received an additional tool for negotiating with state authorities.

322. Taking into consideration the legal framework and also their knowledge of what happens in practice, the rapporteurs concluded that Ukraine complies with Article 11 of the Charter; however, they would strongly encourage the Ukrainian authorities to introduce the possibility of constitutional complaint for local authorities as this would decisively strengthen the judicial protection offered to the institution of local self-government.

## 4. ANALYSIS OF THE SITUATION OF REGIONAL DEMOCRACY IN THE LIGHT OF THE REFERENCE FRAMEWORK FOR REGIONAL DEMOCRACY

**Antecedents: main developments concerning regional democracy**

323. The regional level in Ukraine comprises 24 oblasts along with the Autonomous Republic of Crimea and the two cities of Kyiv and Sevastopol (that have special legal status).The largest is the Odessa Oblast (33 295 km²), while the smallest is the Chernivtsi Oblast (8 093 km²). The most populated Oblast is Donetsk (4 448 031 inhabitants) while the Chernivtsi Oblast is the least populated (903 782 inhabitants).

**Table: Ukrainian Regions**

| Region | Area (km²) | Population (2010) | Population density per square km | Administrative centre | Rayons/ Districts | Cities of oblast significance |
|---|---|---|---|---|---|---|
| Donetsk Oblast | 26 505.7 | 4 448 031 | 167.81 | Donetsk | 18 | 28 |
| Dnipropetrovsk Oblast | 31 900.5 | 3 344 073 | 104.83 | Dnipro | 22 | 13 |
| Kharkiv Oblast | 31 401.6 | 2 755 177 | 87.74 | Kharkiv | 27 | 7 |
| Lviv Oblast | 21 823.7 | 2 545 634 | 116.65 | Lviv | 20 | 9 |
| Odessa Oblast | 33 295.9 | 2 387 636 | 71.71 | Odessa | 26 | 7 |
| Luhansk Oblast | 26 672.5 | 2 300 412 | 86.25 | Luhansk | 18 | 14 |
| Zaporizhia Oblast | 27 168.5 | 1 805 431 | 66.45 | Zaporizhia | 20 | 5 |
| Kyiv Oblast | 28 118.9 | 1 719 602 | 61.15 | Kyiv | 25 | 13 |
| Vinnytsia Oblast | 26 501.6 | 1 646 250 | 62.12 | Vinnytsia | 27 | 6 |
| Poltava Oblast | 28 735.8 | 1 493 668 | 51.98 | Poltava | 25 | 5 |
| Ivano-Frankivsk Oblast | 13 894.0 | 1 380 770 | 99.38 | Ivano-Frankivsk | 14 | 6 |
| Khmelnytskyi Oblast | 20 636.2 | 1 331 534 | 64.52 | Khmelnytskyi | 20 | 6 |
| Cherkasy Oblast | 20 891 | 1 291 135 | 61.80 | Cherkasy | 20 | 6 |
| Zhytomyr Oblast | 29 819.2 | 1 283 201 | 43.03 | Zhytomyr | 23 | 5 |
| Zakarpattia Oblast | 12 771.5 | 1 246 323 | 97.59 | Uzhhorod | 13 | 5 |
| Mykolaiv Oblast | 24 587.4 | 1 186 452 | 48.25 | Mykolaiv | 19 | 5 |
| Sumy Oblast | 23 823.9 | 1 166 765 | 48.97 | Sumy | 18 | 7 |
| Rivne Oblast | 20 038.5 | 1 152 576 | 57.52 | Rivne | 16 | 4 |
| Chernihiv Oblast | 31 851.3 | 1 104 241 | 34.67 | Chernihiv | 22 | 3 |
| Kherson Oblast | 28 449 | 1 091 151 | 38.35 | Kherson | 18 | 3 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Ternopil Oblast | 13 817.1 | 1 086 694 | 78.65 | Ternopil | 17 | 1 |
| Volyn Oblast | 20 135.3 | 1 038 223 | 51.56 | Lutsk | 16 | 4 |
| Kirovohrad Oblast | 24 577.5 | 1 014 809 | 41.29 | Kropyvnytskyi | 21 | 4 |
| Chernivtsi Oblast | 8 093.6 | 903 782 | 111.67 | Chernivtsi | 11 | 2 |

324. According to the OECD, Ukraine inherited substantial regional imbalances from the Soviet era, which were exacerbated during the transition recession in the 1990s. Interregional disparities have continued to rise since the turn of the century, with a marked increase since the Donbas conflict erupted in 2014. The rapid economic development of the Kyiv agglomeration is a major factor behind rising territorial disparities: Kyiv city and the surrounding oblast (region) accounted for almost 60% of national GDP growth in the period 2004 to 2014. The OECD Territorial Review of Ukraine published in February 2014 identified municipal mergers, decentralisation and regional development as mechanisms that could help address a series of interrelated challenges at the territorial level. These challenges included regional disparities; significant shifts in productivity; high unemployment and informal employment; demographic change; poor-quality services; and top-down, centralised multi-level governance structures that remain rooted in pre-independence practices. In addition, the conflict in the east that began in 2014 has amplified the territorial challenges and underscored the need to build greater state resilience.[104]

Figure 2: The Ukrainian regions

**Constitutional scheme for regional democracy**

325. According to Article 133, paragraph 2, of the constitution, Ukraine is composed of the Autonomous Republic of Crimea, Vinnytsia Oblast, Volyn Oblast, Dnipropetrovsk Oblast, Donetsk Oblast, Zhytomyr Oblast, Zakarpattia Oblast, Zaporizhia Oblast, Ivano-Frankivsk Oblast, Kyiv Oblast, Kirovohrad Oblast, Luhansk Oblast, Lviv Oblast, Mykolaiv Oblast, Odesa Oblast, Poltava Oblast, Rivne Oblast, Sumy Oblast, Ternopil Oblast, Kharkiv Oblast, Kherson Oblast, Khmelnytskyi Oblast, Cherkasy Oblast, Chernivtsi Oblast and Chernihiv Oblast, and the Cities of Kyiv and Sevastopol. This means that the existing oblasts cannot be merged as long as they are mentioned in the constitution. According to the recent proposals for the amendment of the constitution this wording could change. In this way a new opportunity would be created for territorial reform at the oblast level.

326. As already analysed (part 3.1), by contrast to first-tier municipalities who have their own executive bodies, oblasts are deprived of this entitlement. In Ukraine, the constitution itself defines in Article 118, paragraph 1, that “the executive power in oblasts, districts, and in the Cities of Kyiv and Sevastopol is exercised by local state administrations”. At the regional level, a fully fledged system of regional self-government does not exist and Ukraine has not followed the suggestion of Recommendation 348 (2013) to transfer the competences of state administrations in regions (and districts) to elected representatives in order to establish a regional administration under their own responsibility.

104. www.oecd-ilibrary.org/urban-rural-and-regional-development/maintaining-the-momentum-of-decentralisation-in-ukraine_9789264301436-en.

327. Concerning the special status of the Autonomous Republic of Crimea and the city of Sevastopol, in spite of the fact that this territory is not under the effective control of the Ukrainian government since the illegal annexation by the Russian Federation in 2014, some constitutional provisions should be mentioned.

328. The Autonomous Republic of Crimea has its own constitution of 1998 (in effect since January 1999) that was adopted by the Verkhovna Rada of the Autonomous Republic of Crimea and approved by the Verkhovna Rada of Ukraine. Normative legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea and decisions of the Council of Ministers of the Autonomous Republic of Crimea shall not contradict the constitution and the laws of Ukraine and are adopted in accordance with the Constitution of Ukraine, the laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, and for their execution (Article 135 of the constitution).

329. The Council of Ministers of the Autonomous Republic of Crimea is the government of the Autonomous Republic of Crimea. The Head of the Council of Ministers of the Autonomous Republic of Crimea is appointed to office and dismissed by the Verkhovna Rada of the Autonomous Republic of Crimea upon the consent of the President of Ukraine (Article 136, paragraph 4).

330. The Autonomous Republic of Crimea exercises normative regulation on the following issues: 1. agriculture and forestry; 2. land reclamation and mining; 3. public works, crafts and trades; charity; 4. city construction and housing management; 5. tourism, the hotel business, fairs; 6. museums, libraries, theatres, other cultural establishments and historical and cultural preserves; 7. public transportation, roads and water supply; 8. hunting and fishing; 9. sanitary and hospital services. For reasons of non-conformity of normative legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea with the Constitution of Ukraine and the laws of Ukraine, the President of Ukraine may suspend these normative legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea with a simultaneous appeal to the Constitutional Court of Ukraine in regard to their constitutionality (Article 137).

331. According to Article 10 of the Crimean Constitution of 1998, Russian, being the language spoken by the majority of population and the language acceptable for purposes of interethnic communication, was allowed to be used in all spheres of public life (60% of the Crimean residents used Russian language according to the 2001 census). At the same time, this article stated that in the Autonomous Republic of Crimea, alongside with the official language, the application and development, use and protection of Russian, Crimean Tatar and other ethnic groups' languages shall be secured. It should be noted that in 2012 Ukraine ratified the European Charter for Regional or Minority Languages (Law No. 5029-VI of 3 July 2012).

**Internal organisation**

332. While first-tier municipalities have their own executive bodies, in Ukraine the constitution itself defines in Article 118, paragraph 1, that "the executive power in oblasts, districts, and in the Cities of Kyiv and Sevastopol is exercised by local state administrations". Therefore, an obvious question arises about the relation between the state administration and the elected councils at rayon or oblast level.

333. The district and oblast levels are not fully fledged levels of territorial self-government. Although there is a directly elected council, it has hardly any executive powers of its own and must use a state executive body to implement its decisions. The future design of the district and oblast levels should be subject to the constitutional amendments.

334. The institutional aspects of the regional governance reform have still not been properly addressed. The allocation of powers between local state executive bodies and councils, and between councils of different levels, awaits further resolution. The regional councils' ability to manage regional powers has not changed since 2007.[105]

During the consultation procedure, the Ministry of Communities and Territories Development has reiterated that the issue of oblast/district's lack of own executive bodies cannot be fully resolved without constitutional amendments. At the same time, should the draft law "On local state administrations" be adopted, all functions which local state administration carries out as a quasi-executive body of the district/regional council, will be concentrated in a separate structural unit, which, provided that the Constitution is amended, would be turned

105. Anatoliy Kruglashov, Ukraine, Congress Of Local And Regional Authorities of the Council Of Europe. Regionalisation Trends in European Countries 2007-2015. A study by members of the Group of Independent Experts of the European Charter of Local Self-Government, Edited by Professor Francesco Merloni, Strasbourg 2016, pp. 203-208.

into an executive body of the district/regional council. The main functions of the local state administration will be the coordination of public authorities and ensuring the rule of law on the relevant territory. The Ministry stresses that such changes should reduce tension in case of potential conflicts between district/regional councils and relevant local state administrations.

**Regional competences**

335. While additional competences have been transferred to local government and especially to ATCs, there is an obvious stagnation concerning the regional level. A key word at present for the reforms of regional governance is "decentralisation". The very idea of decentralising Ukrainian governance of territories is welcomed by society at large. It seems to be a golden middle path between the scenario of federalisation for the country (which is not regarded as a good prospect for the state and the nation), and the previous highly centralised, bureaucratic and corrupt system of government. The process of decentralisation can be accelerated through constitutional amendments and changes in the legal framework, but it will certainly remain an unfinished project if the question of multi-level governance remains unsolved and the creation of economically efficient regions is not at the top of the reform agenda.

## 5. OTHER MATTERS RELATED TO THE FUNCTIONING OF LOCAL AND REGIONAL SELF-GOVERNMENT

336. One positive aspect of the changes taking place in Ukraine, with regard to the decentralisation process, is the growth of the impact of civil society. There are new forms of interaction between regional and local institutions of power and NGOs and civil society activists. Local councils and state administrations are developing new platforms and practices to improve communication, such as consultative bodies, expert committees, public hearings, information requests and electronic petitions.[106]

337. In September 2014, Ukraine ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority. The Congress assessed it as a positive step forward in the implementation of Recommendation 348 (2013).

338. According to an analysis of civic participation and responsiveness of local authorities in Ukraine conducted in 2015,[107] the most common forms of participation were meetings with representatives of the city council, attending general public meetings and public meetings with the mayor. It seems the local authorities' mandatory meetings with citizens draw considerable audiences. According to the analysis presented in the Handbooks on Transparency and Citizen Participation in Ukraine, prepared by the Congress,[108] transparency and citizen participation have been formally recognised and accepted as vital elements in the prevention of corruption.

However, the rapporteurs note that although referendum is recognised in the constitution as an instrument of "the expression of the will by the people", it cannot yet be implemented in practice due to the lack of a legal framework on referendums, both national and local.

339. It appears that the voluntary amalgamation has enhanced the development of local democracy by encouraging political and civic engagement. Each new entity's self-government body consists of:

(a) a directly elected ATC head (holova);
(b) a directly elected territorial council with its own executive committee;
(c) a group of elders (starosty).

Starosty are directly elected representatives of villages and settlements outside the settlement where the administrative centre of the ATC is located.

340. Thus, the institutional design of ATCs aims at ensuring the representation of residents from each of their constituent basic communities. The new local self-government bodies tend to be open to public consultation and participation. Often, civic councils (hromadski rady) are consulted by the elected councils. "Participatory

106. Ibid.
107. Local democracy in Ukrainian cities: civic participation and responsiveness of local authorities, by Aadne Assland and Oleksii Lyska, 2015, www.tandfonline.com/doi/full/10.1080/1060586X.2015.1037072?scroll=top&needAccess=true.
108. See Handbook on Transparency and Citizen Participation in Ukraine, by the Congress www.coe.int/en/web/congress/all-news-newsletter/-/asset_publisher/CR0prMtPOIKO/content/handbooks-on-transparency-and-citizen-participation?_101_INSTANCE_CR0prMtPOIKO_viewMode=view/

budget" programmes allow residents to apply for financial resources from their community's budget in support of their own projects for local development.

341. In December 2019, the Verkhovna Rada passed a new Electoral Code (Law No. 396-IX, dated 19 December 2019)[109] that introduced fundamentally new electoral systems for parliamentary and local elections.[110] It came into force on 1 January 2020, but was further amended in July 2020 as regards local election. The new rules will be applied to the local elections scheduled for 25 October 2020.

342. The new Electoral Code[111] partially implements a proportional representation voting system with open party lists for both parliamentary and local elections: the code eliminates Ukraine's single-member districts in parliamentary elections, but partially keeps them on the local level. The proportional system with open party lists means that individual candidates can now be shifted up the party list if they attract more support from voters.

343. Internally displaced people will also be able to vote in local elections in the places where they currently live. During the local elections in 2015, they were unable to do so, which provoked significant criticism of the existing electoral system. The new electoral norms will also set a 40% quota for women's representation, since there is a persistent problem of gender under-representation.

## 6. CONCLUSIONS AND RECOMMENDATIONS

344. There is no doubt that considerable progress has been made through the decentralisation reform, including the creation of new amalgamated territorial communities that have received additional competences and resources, the promotion of intermunicipal co-operation and important steps towards financial decentralisation.

345. Another positive aspect is the ongoing dialogue and close co-operation of the Ukrainian authorities with the Council of Europe and other international organisations promoting democracy, human rights, regional development and decentralisation.

346. It is important to stress the changes in the administrative territorial structure of the country, the planned introduction into the amended constitution of the principle of ubiquity (or omnipresence) of hromadas and of the principle of subsidiarity, as well as the termination of the institution of rayon/okruh and oblast Head of Local State Administration ("governor") and its replacement by the more modern institution of prefect.

347. However, the rapporteurs consider that in the context of the process of revision of the Constitution of Ukraine improvement is needed or recommended in a number of fields, as explained in the current opinion, in particular:

- the definition of local self-government can be improved and brought closer to the that defined in the Charter;
- the relations between levels of sub-national government should be clarified;
- changes should be made in order to avoid the politicisation of the prefect institution and to make prefects accountable to government for most issues under their responsibility;
- the principle of proportionality should be added in line with Article 8, paragraph 3, of the Charter;
- the powers of the prefects and the procedure of administrative supervision should be streamlined, simplified and clarified;
- the procedure for dealing with acts that (allegedly) violate the constitution and threaten national sovereignty, territorial integrity and security should give more flexibility to the President and more time and broader powers to the Constitutional Court;
- the provisions concerning local finance should be improved.

348. There are also obvious concerns on the following issues:

- Oblasts and rayons are still dependent on state administration for the execution and implementation of their decisions. As far as these tiers are deprived of their own administrative machinery there is not a fully fledged regional/rayon tier of territorial self-government in Ukraine.

109. https://decentralization.gov.ua/en/news/12087.
110. https://ifesukraine.org/ukraines-parliament-adopts-historic-election-code/?lang=en.
111. www.kyivpost.com/ukraine-politics/parliament-adopts-electoral-code-with-new-voting-rules.html.

- Deposits for candidatures in local elections can discourage or even block candidates who are not able to cover the very high costs, in some cases, of such deposits.
- The existing recall procedures for elected mayors and especially for councillors violate the principle of free mandate and the Charter.
- Delegation of powers should be comprehensive and for the benefit of as many as possible local authorities and include the regional self-government tier.
- Local authorities are short of specialist and well-trained staff.
- A comprehensive system of administrative supervision has not yet been established while state control over municipal tasks is exercised in a fragmented way and tends towards expediency control.
- Although some steps towards financial decentralisation have been made, there is still a lack of sufficient and concomitant financing, local authorities are short of fiscal autonomy and highly dependent on upper-level grants, which are mostly earmarked. The existing equalisation system is not sufficient.
- Consultation procedures have not been systematised and consultation is usually deployed on an ad hoc basis without a visible impact on decision outcomes.
- Territorial self-governments are deprived of the opportunity for a constitutional remedy that would certainly upgrade the level of judicial protection offered to local government in Ukraine.

349. In light of the foregoing, the rapporteurs would invite the authorities in Ukraine to do the following:

- Continue, widen and enhance the ongoing decentralisation reform and complete the revision of the constitution introducing, *inter alia*, the principles of ubiquity and subsidiarity in accordance with the Charter.
- Establish oblast/rayon administrations that would take over the responsibility for the implementation of oblast/rayon council decisions and be accountable to them. Transfer and decentralise the necessary human and financial resources as well as the corresponding assets in order to transform the Ukrainian oblasts into a fully fledged level of local self-government on the level of oblasts.
- Abolish disproportionate deposits for candidatures and all other obstacles to open and fair political competition in local self-government elections.
- Abolish recall procedures that violate the principle of free mandate.
- Take further steps in the direction of systematic financial decentralisation that would also promote regional development.
- Introduce the institute of the prefect and a comprehensive system of administrative supervision in line with the principle of proportionality.
- Introduce a comprehensive and stable system of consultation with local authorities and their associations.

**APPENDIX – Programme of the Congress monitoring visit to Ukraine**

**CONGRESS MONITORING VISIT TO UKRAINE**
***Kyiv, Fastiv, Tomashivska* (4-6 March 2020)**

**PROGRAMME**

**Congress delegation**

**Rapporteurs**

| | |
|---|---|
| Ms Gudrun MOSLER-TOERNSTROEM | Rapporteur on local democracy<br>Chamber of Local Authorities, SOC/G/PD[112]<br>Member of the Monitoring Committee of the Congress<br>Municipal councillor of Puch bei Hallein, Austria |
| Ms Gunn Marit HELGESEN | Rapporteur on regional democracy<br>Chamber of Regions, EPP/CCE<br>Vice-President of the Congress<br>Member of the Monitoring Committee of the Congress<br>County councillor of Telemark, Norway |

**Congress secretariat**

| | |
|---|---|
| Ms Stéphanie POIREL | Secretary to the Monitoring Committee |

**Expert**

| | |
|---|---|
| Mr Nikolaos-Komninos CHLEPAS | Member of the Group of Independent Experts on the European Charter of Local Self-Government (Greece) |

**Interpreters**

Ms Natalya MOROZ

Ms Larysa SYCH

The working languages, for which interpretation is provided during the meetings, will be Ukrainian and English.

112. EPP/CCE: European People's Party Group in the Congress
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats
ILDG: Independent and Liberal Democrat Group
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a political group of the Congress.

**Wednesday, 4 March 2020**
**Kyiv**

**JOINT MEETING WITH MEMBERS OF THE NATIONAL DELEGATION OF UKRAINE TO THE CONGRESS, ASSOCIATIONS AND EXPERTS**

- **NATIONAL DELEGATION**

  **Mr Volodymyr PROKOPIV**, Head of the delegation, Deputy Mayor, Kyiv City Council

  **Mr Oleksandr SIENKEVYCH**, Mayor of Mykolaiv City
  **Mr Sergii MAZUR**, Mayor of Balta
  **Ms Svitlana BOHATYRCHUK KRYVKO**, Councillor, Rivne Regional Council
  **Ms Oksana KALIUZHNA**, Councillor, Turiys'k District Council, Volyn Region
  **Mr Petro PRYHARA**, Councillor, Khust District Council, Zakarpattia Region

- **UKRAINIAN ASSOCIATION OF DISTRICT AND REGIONAL COUNCILS**

  **Mr Sergei CHERNOV**, President of the association

- **ASSOCIATION OF UKRAINIAN CITIES**

  **Mr Oleksandr SLOBOZHAN**, Executive director of the association
  **Mr Yaroslav RABOSHUK**, Deputy Executive Director
  **Ms Julia BANDURA**, Co-ordinator of International Activity

- **ASSOCIATION OF VILLAGE AND TOWN COUNCILS**

  **Mr Mykola FURSENKO,** Chair
  **Mr Serhij ZAMIDRA**, Deputy Chair, Chair of the Nemishaivka village council
  **Mr Mykola POEDYNOK**, Deputy Chair, Head of the Executive Directorate
  **Mr Igor ABRAMJUK**, Director of development

- **ASSOCIATION OF AMALGAMATED TERRITORIAL COMMUNITIES**

  **Ms Valentina POLTAVETS**, Executive director of the association

- **EXPERT**

  **Dr Igor DUNAYEV**, Associate Professor, Kharkiv regional Institute of National Academy of Public Administration attached to the Office of the President of Ukraine

**JOINT MEETING WITH GEORG MILBRADT, MANUELA SÖLLER-WINKLER AND REPRESENTATIVES OF THE EMBASSIES OF AUSTRIA AND NORWAY**

**Mr Georg MILBRADT**, Special Envoy of the Government of Germany for the Ukrainian reform in the areas of governance and decentralisation
**Ms Manuela SÖLLER-WINKLER,** U-LEAD expert, former State Secretary of the Interior Ministry in Schleswig-Holstein, Germany
**Mr Florian KOHLFÜRST**, Deputy Head of Mission, Embassy of Austria to Ukraine
**Mr Ole Terje HORPESTAD**, Ambassador of Norway to Ukraine

**KYIV CITY HALL**

**Mr Vitaliy KLITSCHKO**, Mayor

**UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS**

**Ms Olena STEPANENKO**, Representative of the Commissioner for Social and Economic Rights
**Mr Viktor IVANKEVYCH**, Representative of the Commissioner for Equal Rights and Freedoms

**Thursday, 5 March 2020**
**Kyiv**

**ACCOUNTING CHAMBER**

**Mr Vadym KHODAKOVSKYI**, Secretary of the Accounting Chamber
**Mr Ihor STEFANIUK,** Deputy Head of the Department – Head of the Investment Projects and Regional Development Audit Unit of the Public Administration and Interbudgetary Relations Control Department
**Ms Tetiana DNIPROVA**, Deputy Head of the Department – Head of Unit of the International Cooperation Department
**Ms Nataliia LOZYNSKA,** Lead Specialist of the International Cooperation Department

**MINISTRY OF FINANCE**

**Mr Gennady PLIS**, Deputy Minister of Finance
**Ms Olena MACHULNA**, Director of the Department of Local Budgets
**Ms Olena GOGOL**, Deputy Head of the Department – Head of the Department of Local Budget Strategy of the Department of Local Budgets

**CONSTITUTIONAL COURT**

**Mr Oleksandr TUPYTSKYI**, Chair
**Mr Serhiy HOLOVATY**, Deputy Chair, member of the European Commission for Democracy through Law (Venice Commission)
**Mr Viktor HORODOVENKO**, Judge of the Constitutional Court of Ukraine
**Mr Viktor KOLISNYK**, Judge of the Constitutional Court of Ukraine
**Mr Oleh PERVOMAISKYI**, Judge of the Constitutional Court of Ukraine

**PARLIAMENT (VERKHOVNA RADA)**

**Mr Oleksandr KORNIIENKO**, Chairman, Servant of the People party
**Mr Andriy KLOCHKO**, Chair of the Committee on State Building, Local Governance, Regional and Urban Development
**Mr Roman LOZINSKYI,** First Deputy Chair of the Committee on State Building, Local Governance, Regional and Urban Development
**Mr Vitaly BEZGIN**, Chair of the subcommittee on administrative and territorial issues
**Ms Alina ZAGORUIKO**, Deputy chair of the Committee, chair of the subcommittee on elections, referendums and other forms of direct democracy

**MINISTRY OF COMMUNITY AND TERRITORIAL DEVELOPMENT**

**Mr Vyacheslav NEHODA**, Deputy Minister

**PRESIDENTIAL OFFICE**

**Ms Olha BUHAI**, Director General for Regional Policy and Decentralisation
**Ms Alyona STUDENETSKA**, Head of the expert group for public service and decentralisation; Directorate for Regional Policy and Decentralisation Office of the President of Ukraine
**Mr Sergii CHYKURLII**, Chief consultant; Directorate for Regional Policy and Decentralisation; Office of the President of Ukraine

**Friday, 6 March 2020**
**Fastiv, Tomashivska**

**CITY OF FASTIV**

**Mr Mykhaylo NETYAZHUK**, Mayor

**DISTRICT OF FASTIV**

**Mr Hennadii SYVANENKO**, Chair of District Council

**AMALGAMATED TERRITORIAL COMMUNITY OF TOMASHIVSKA**

**Ms Olena PASHUN**, Mayor

**KYIV OBLAST (REGION)**

**Mr Mykola STARYCHENKO**, Chair of the Regional Council
**Mr Yaroslav DOBRIANSKYI**, Deputy Chairman of the Kyiv Regional Council
**Mr Volodymyr UDOVYCHENKO**, Chief of Standing Committee of Local Self-Government, Decentralisation and Administrative Territorial Development
**Mr Serhii KARMAZIN**, Chief of the Standing Committee on Socio-Economic Development, Industry, Business, Trade and Financial Support
**Mr Hennadiy HREBNOV**, Head of the Information Policy and International Relations Department