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**APPRAISAL
OF THE DRAFT LAW OF UKRAINE
“ON LOCAL INITIATIVES”**

The present report was prepared by the Council of Europe Centre of Expertise for Local Government Reform, Directorate General II - Democracy, in co-operation with Prof. Gérard Marcou, University Paris 1 Panthéon-Sorbonne, Director of GRALE (Research Group on Local Administration in Europe), France and Mr. Anatoliy Tkachuk, Director on Science and Development of the Civil Society Institute, Ukraine.

Introduction

The Parliamentary Committee on State Building and Local Self-Government requested the Council of Europe (CoE) to provide legal expertise of the draft Laws "On amalgamation of territorial communities" and "On local initiatives". The appraisals – CELGR LEX 1 and CELGR LEX 2 - were prepared by the CoE experts within the framework of the CoE Programme to Strengthen Local Democracy in Ukraine (2010-2013, funded by the Swedish International Development Cooperation Agency Sida).

The draft law on the amalgamation of territorial communities is an important step to the territorial reform of the first local government tier in Ukraine that has been discussed for many years and has already given rise to numerous reform projects. The draft law on local initiatives is an attempt to regulate such an important instrument for citizen participation in local self-government issues as "local initiatives". Both refer to the Ukrainian constitution and to the local government law 1997, where the legal basis can be found, but due to the lack of procedures that would make respective legislation provisions operational, it is not always possible to implement general provisions on amalgamation of territorial communities and local initiatives in practice.

These are two separate but inter-related draft laws: for example, in case of the implementation of the law on the amalgamation of territorial communities, legal norms regarding the right for local initiatives should be significantly specified – the larger size of the municipal self-government units should be considered in the provisions of the draft law on local initiatives.

Overall, improvement of legal regulation on the procedure of amalgamation of territorial communities and exercising the right for local initiatives would result in significant improvements of the local government system of Ukraine and in the further development of local democracy. These drafts are, in general, in line with the European Charter on Local Self-Government and the Principles of Good Democratic Governance at the Local and Regional Levels formulated by the Ministerial Conference of October 2007 in Valencia.

However two major issues could undermine the reform:

- 1. As regards the draft law on the amalgamation of territorial communities, the schedule for the implementation of the**

reform has to be regulated by the law. Enough time and a deadline should be given for discussions at local level in order to build political agreements on the new boundaries. The participation of existing local government councils and their associations in the amalgamation process is not organised.

- 2. As regards the draft law on local initiatives, its purpose, on one hand, is to give the opportunity to local communities to exercise their right for local initiatives, but, on the other hand, the adoption of this law would limit the right of local councils to control local affairs, as it is stipulated by Article 9 of the current Law of Ukraine "On local self-government". Therefore, in case of approval of this draft law, the issue should be regulated by legislation at the national level; the draft law should be better coordinated with the law on local referendum that is still pending in the Parliament, and some of the CoE remarks on this draft law can be repeated again on the draft law on local initiatives. The possibility should be given to submit local initiatives concerning only one part of the territory of the municipality, submission procedures should be quite simple and apply efficiently both in large city and small village communities.**

This appraisal will propose amendments in order to improve the draft law on local initiatives. The proposals on the draft law on amalgamation are discussed in the separate appraisal (CELGR LEX 1).

Draft law on local initiatives

This draft law is developed with the purpose of introducing the institution of public participation, stipulated by article 9 of the 1997 local government law: members of a territorial community may turn to their local council with any proposal within the municipal competence for decision. Its goal is to regulate the forms, the procedure and the legal consequences of a citizens' initiative.

The majority of statutes of the Ukrainian city, settlement, and partly village territorial communities include procedures for exercising the rights to local initiatives, which are in one way or another regulated, especially due to the activities of local government associations. The urgency and relevance of the new legislation on local initiatives is thus not very high.

This appraisal will focus only on provisions which should be further discussed or amended.

Ukrainian territorial communities are very different: ranging from cities with millions of population to communities with less than 100 inhabitants, therefore the draft law provisions should take this fact into account. The law has to be, on one hand, quite simple to implement, and, on the other hand, it should not allow for any abuse.

Therefore the recommendation is to harmonise the terminology of this draft law with the terminology of the draft law "On local referendums", and to delete complicated provisions referring to general meetings of citizens.

According to the draft law, the local initiative is "an official written proposal of members of the territorial community on a question of local competence" (art.1). The word "member" is used in the local government law, but not in articles 140-143 of the Constitution where the word "inhabitant" (житель) can be found. It is also used in the draft law pending in the parliament on local referendums.

As commented earlier, this is not an adequate wording. It could be argued, because of this formulation, that two different lists should be used, one for the voters, and the other one for "members of the territorial community", who would be entitled to exercise direct democracy rights, since some of the "members" could be deprived from citizen rights. The Constitution does not call for such a distinction, since article 140 declares that the territorial community shall exercise its self-government rights directly or through elected bodies. This means that the participation to direct democracy procedure cannot be based on other rules than the voting right. Therefore, **the recommendation is to use the word "citizen" (or community citizen) instead of "members of the community", in order to make clear that the participation in direct democracy procedures derives from the quality of citizen according to Ukrainian law.**

Secondly, the **provisions on the initiative group should be harmonised with provisions on the initiative of a local referendum as it is provided in the draft law on local referendums.** Again, it could only be confusing for the people that different rules be applied in similar meetings.

In general terms, the conditions for the presentation of citizen initiatives to the municipal council, with the exception of the above mentioned, and for consideration and decision by the council do not raise objections or critics. However, there is a problem, considering the implementation of the territorial reform and the formation of unified territorial communities.

As it is, the draft law considers only the case of citizen initiatives concerning the whole municipality. There is no provision contemplating the case of an initiative concerning only part of the territory of the municipality. Furthermore, the number of signatures necessary to support a citizen initiative is determined with respect to the whole municipal population.

However, especially in a big city, and also in a unified territorial community, it is quite possible that an issue concerns only a part of the municipal territory. Therefore, it would be relevant to authorise citizen initiatives for only that part. In such cases, the number of signatures should be fixed with respect to the population of this part. This raises the question of the determination of the area in which such initiatives could be undertaken. Several simple criteria may be proposed:

- In cities with inner city districts, the area considered could be the inner city district and in that case, the citizen initiative should be directed to the local council of the inner city district.
- In unified territorial communities resulting from the implementation of the reform, this could be the area of the previous communities or, even better, of each agglomeration. The *starosta* does not need to have a special role in this procedure, because any rule that could put the *starosta* in conflict with the inhabitants would undermine his or her function.
- Another issue is the consideration of self-organisation bodies of the population according to article 14 of the law on local government, the status of which is established by another law. As far as these self-organisation bodies are authorised by the municipal authority and are vested with some delegated powers, they have their own representatives in relation to the municipal council, and it is probably not necessary to introduce the possibility of citizen initiatives in the sense of the present draft law; but this could be discussed, in

particular in cases when the population concerned is relatively numerous (for example several thousand or inhabitants in cities).

The draft law should be amended in order to enable citizen initiatives concerning only a part of the territorial community. Then, the threshold numbers of signatures required for the presentation of the initiative should be counted with respect to the number of inhabitants of the said area. The law could add the requirement that the adoption of the decision proposed by such an initiative should not be detrimental to the whole municipality or other parts of the territory of the community (for example, the location of an infrastructure bringing inconveniences for the neighbouring district).

Another issue that needs reconsideration is the registration procedure of the initiative. According to article 11, the initiative group has to register the initiative by the secretary of the municipal council, while presenting all documents listed by the law, including the decision project. However, according to article 12, before consideration of the project, the municipal council may refuse the registration if it is in breach of the Constitution of Ukraine or the laws of Ukraine, or if its matter is out of the territorial jurisdiction of the council. Mistakes in the initiative may be redressed if they are not in breach of the requirements of article 11.

This means that the council has to deal twice with the initiative: first to check that the initiative is in accordance with legal requirements, especially as regards its content, and eventually a second reading to decide on the merit of the proposal. In that case, the first one is not a matter of registration. **The registration is by the secretary of the council and is needed only to check the content of the file and deliver a receipt (this should be put in the law).** Then there are two readings on the initiative, and this should be provided by the law in these terms; the law should also provide for a maximum period of time between both readings and for the regularisation of the initiative if required by a decision of the first reading. Therefore, **it would be more consistent to move the matter of article 12 in chapter III of the law between article 15 and article 16. The law should also give the opportunity to proceed with only one reading if there is no need for regularisation (so that the council can decide on the merits), or if there are legal obstacles against the**

reading on the merits of the initiative. This should be taken into account in the definition of the task of the commission in article 15.

To conclude, there are two ways for regulating the right to exercise local initiatives: the first one, proposed in this draft law, is to take away the right of local councils to establish the procedure for local community initiatives and arrange all the respective provisions by the law, which is quite difficult. The second one is to make necessary amendments to Article 9 of the current Law of Ukraine "On Local Self-Government" to stipulate the minimally needed norms, which local councils should apply when approving regulatory acts on local initiatives. This will not reduce the rights of local councils to regulate local affairs, and will protect communities from overregulation of their rights to local initiatives.