

The Bureau of the Congress

CG/BUR(2020)33-INF36¹

2 June 2020

Exchange of letters with Vitaliy KLITSCHKO, Chairman of the Association of Ukrainian Cities (AUC)

(see also document [CG/BUR29\(2019\)45](#) and [CG/BUR31\(2020\)INF14](#))

Document submitted for information to the Bureau of the Congress on 9 June 2020

¹ This document is classified as confidential until it has been examined by the Bureau of the Congress



The Secretary General

Mr Vitaliy Klitschko
Chairman of the
Association of Ukrainian Cities
Kyiv
Ukraine

Ref ► 2020-247

Strasbourg, 11 May 2020

Dear Chairman, *Lieber Herr Klitschko,*

Thank you for your letter of 27 April 2020, confirming the interest of the Association of Ukrainian Cities in exchanging with the Congress as regards experiences of local and regional authorities and best practices in this time of an extreme crisis. This means recognition to us and proves the vibrant exchange between your Association and the Congress that has been translating into many joint activities over the recent years, notably in the frame of the Congress' co-operation programmes.

Indeed, the ongoing COVID-19 pandemic is not only threatening the lives and health of millions of people worldwide, it is also a fundamental political challenge to democracy in Council of Europe member States and beyond.

Local and regional authorities have a pivotal role in managing daily this unprecedented crisis. This includes coordination with other levels of government regarding measures to be implemented at the local level and reacting to new developments of the disease while maintaining core services for their residents like protection of vulnerable groups, childcare or waste management, as the pandemic continues. In addition, municipalities and regions are often in charge of public hospitals or share the responsibility with central government and are thus in the focus of the action. The pressure on them is immense – in terms of managerial capacities and democratic functioning as well as the financial burdens linked to the mitigation of the pandemic at the grassroots.

From the very beginning of the lockdown due to COVID-19, the Congress has developed strategies to offer guidance to local and regional authorities in this time of uncertainties. Therefore, we have created an information hub summarising partner's actions on our Congress website to show how cities and regions respond to the current challenges.

Referring to your question about the local elections in Ukraine which are scheduled for October 2020, I can inform you that the Congress is preparing a reflection paper on "local and regional elections in the time of Corona" that will be presented at the forthcoming virtual Bureau meeting of the Congress on 9 June. Based on this reflection process, a Congress expert report will be drafted and debated on 21 September, when the Congress Monitoring Committee is supposed to meet in Strasbourg. The adoption of this expert report is planned for the Plenary Session to be held from 27 to 29 October.

In extreme crisis situations such as the COVID-19 pandemic, holding elections has become a challenge to democracies across Europe. On the one hand, elections are a cornerstone of democracy and need to be held regularly within constitutional and legal timeframes. On the other hand, they entail a high risk of spreading the disease to both voters and the electoral staff in the polling stations. As a result, elections, including local and regional ballots, have been postponed in some member States while other countries have used alternative forms such as postal voting, seeking to limit spread of the disease.

From the Congress' perspective, this situation has raised important questions with regards to the international standards for democratic elections against the backdrop the current unprecedented situation. Without taking a firm position on whether or how local and regional elections could or should be held during the ongoing pandemic and in extreme crisis situations (and the European Charter of Local Self-Government does not speak out on this), certain guidelines can be drawn from international standards and recent practices of Council of Europe member States.

Consequently, the Congress expert report will contain legal and constitutional considerations on postponing elections in times of crisis including recommendations on measures that can mitigate the risk of spreading the virus. It will summarise existing alternative voting methods, including postal and internet voting and address possible impacts of postponing elections. As regards to the latter, it can be said that international law allows for the derogation of the right to vote and stand for election in emergency situations, although only within very strict limits to prevent abuse.

In relation to Article 15 of the European Convention of Human Rights, the Council of Europe Secretary General recently stated that "any derogation of rights must have a clear basis in domestic law in order to protect against arbitrariness and must be strictly necessary to fighting against the public emergency." Postponement of elections cannot be justified if it goes against the requirements of lawfulness and proportionality. An essential point will be that there should be consensus between the political stakeholders on any decision taken in respect of elections.

With regard to your question on the parts of the electoral legislation in Ukraine, notably the mandatory requirement for candidates to be party members for certain communities, I should like to quote the 1990 OSCE Copenhagen Document which guarantees the "right of citizens to seek political or public office, individually or as representatives of political parties or organisations, without discrimination." In general, I should like to recall that the Congress, on the occasion of various election observation missions, has stressed the importance of independent candidates running in local elections.

Last but not least, I would like to refer to the issue of electoral thresholds mentioned in your letter and quote the experts from the Council of Europe Venice Commission who stated in their 2010 report (paragraph 19)¹: "At most it might be argued that national thresholds are acceptable in countries where there is no real national minority problem, or where there are specific measures to deal with it, but they must be used with care, and even replaced by local thresholds where this is necessary." In general, it can be said that, while electoral thresholds in proportional representation systems seem admissible in view of international standards, more than 5% has been found by experts as overly restrictive.

Dear Mayor, I should like to conclude that, with a view to the thematic debates we will organise on "lessons learned for the post-COVID time" during the September meetings of the Congress Committees and during the plenary sessions to come, we would be pleased to receive also further input from AUC. This is a crucial time for democracy and pluralistic societies, and we are all called upon to protect human lives and defend democratic values in all Council of Europe member States. You can count on our support and experience.

Yours sincerely,



Andreas Kiefer

¹ CDL-AD(2010)007, European Commission for Democracy Through Law (Venice Commission), Report on Thresholds and other Features of Electoral Systems which bar Parties from Access to Parliament.



АСОЦІАЦІЯ МІСТ УКРАЇНИ

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№ 4-36
April 27, 2020

Andreas Kiefer
Secretary General
Congress of Local and Regional Authorities
Council of Europe

Dear Mr. Andreas Kiefer,

Let me take this opportunity to express my respect and extend my gratitude for the support the Congress of Local and Regional Authorities of the Council of Europe provides to the Association of Ukrainian Cities (AUC) in advocating for local government interests in the context of the current reform and decentralisation. Expert reviews and consultations we receive from the Congress have significantly strengthened the position of communities and their association in dialogue with the government for the formulation and making decisions that directly affect local government activities.

The COVID-19 coronavirus pandemic has brought new challenges for local governments associated with proper functioning of governance systems, health care and life-sustaining at the local level. Under these circumstances, our communities are working on new methods of activities to most effectively counteract the spread of the virus.

The Association of Ukrainian Cities is interested in exchanging experience and learning about best practices of how local governments exercise their role during crisis periods. In particular, steps for temporary transfer of local government powers, changes in managing local government financial revenues, and impact of temporary decisions on transfer of powers. We would be grateful for your expert recommendations to local governments on how they should organise their activities in the context of the crisis caused by the pandemic.

With the spread of the pandemic, issues related to the organisation and conducting local elections in Ukraine, which are scheduled for October 2020, are extremely important. The experience of other European countries in conducting local elections during the crisis would be very important for Ukraine.

I would like to ask the Congress of Local and Regional Authorities of the Council of Europe to provide information about available relevant practices and recommendations on how to ensure transparency of local elections during the crisis, in particular in the context of the pandemic and overcoming its consequences.

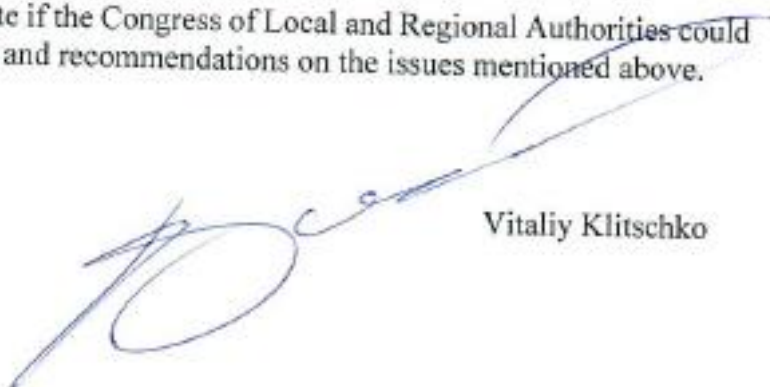
On a separate note, I would like to ask your opinion about to what extent making conceptual amendments to the election legislation half a year before the elections is in line with democratic principles.

In particular, we would be most interested in the following questions:

1. General approaches to organising and conducting open and inclusive elections campaigns during the restrictive quarantine.
2. General approaches to organising and conducting local elections in the context of activities aimed at countering the virus spread on the Election Day.
3. How rescheduling/postponing the elections which timeframe has been envisioned by the Constitution of Ukraine is compliant with European Charter of Local Self-Government.
4. Mandatory requirement for candidates to be party members for communities of 10,000 residents and above.
5. Introducing the 5% threshold of the nation-wide rating for the parties participating in local elections for the distribution of seats in local councils.

We would appreciate if the Congress of Local and Regional Authorities could provide its expert support and recommendations on the issues mentioned above.

Sincerely,
Chairman



Vitaliy Klitschko