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The Council of Europe's Brief Overview of relevant case-law of the European Court of Human Rights in light of ongoing work on Draft Law of Ukraine #3593-D1 "On the temporarily occupied territory"

10 March 2017

Introduction

On 23 January 2017 , the Chair of the Committee on State Development, Regional Policy and Local Self-Government of the Verkhovna Rada of Ukraine, Mr Vlasenko, in a letter to Director General Snezana Markovic, invited the Council of Europe to provide an opinion on Draft Law 3593-D on "Temporarily Occupied Territory of Ukraine".

In view of the complexity of the text, the many issues raised and the very limited time available, a full written opinion could not be prepared. It was the agreed that the Special Adviser to the Secretary General of the Council of Europe for Ukraine would make an oral statement during the meeting of the Committee on 8 February. The Statement appears at https://go.coe.int/dJOmy .

As a Council of Europe member State, Ukraine accepted, according to Article 3 of the Statute of the Organisation, “the principles of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms”. It also ratified a number of conventions and, in particular, the European Convention of human rights and the European Social Charter (revised) and is therefore bound to respect protect and fulfill the human rights enshrined therein in respect of all the population, including Internally displaced persons.

The current document contains comments on the legislative a brief overview of some relevant and significant case-law of the European Court that could give guidance in the ensuing work as well as Comments concerning decentralisation and the European Charter on Local Self-Government.

Brief Overview of relevant case-law of the European Court of Human Rights in light of ongoing work on Draft Law 3593-D[1]

1. Article 1 of the European Convention on Human Rights provides that *"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in section I of this Convention".*

2. The European Convention on Human Rights (hereafter "ECHR") has explained the meaning of the phrase "within their jurisdiction" in an increasing number of cases over the years. For example, in *Issa and Others v. Turkey*,[2] it reiterated its position that "Contracting States must answer for any infringement of the rights and freedoms protected by the Convention committed against individuals placed under their "jurisdiction". Establishing jurisdiction is a necessary precondition for a Contracting State to be held responsible under the ECHR for acts or omissions imputable to it.[3] The ECHR concept of "jurisdiction" reflects the meaning of the term in public international law, i.e. that "a State's jurisdiction is primarily territorial", and presumed to be exercised "normally throughout the State's territory".[4] Thus, in *Assanidze v. Georgia,* the Court asserted that "…as a general rule, the notion of "jurisdiction" within the meaning of Article 1 of the Convention must be considered as reflecting the position under public international law…";[5] and in *Banković and Others v. Belgium and Others* it emphasised that the notion of jurisdiction is "primarily" or "essentially" territorial.[6]

3. Internal conflict or conflict between neighboring countries over borders and ethnic minorities, often has an extraterritorial character and/or raises issues regarding control over disputed territory. As a result, the Court has developed exceptions to the principle of territorial jurisdiction under Article 1 of the ECHR: "The Court has recognized a number of exceptional circumstances capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries. In each case, the question whether exceptional circumstances exist which require and justify a finding by the Court that the State was exercising jurisdiction extra-territorially must be determined with reference to the particular facts".[7] Further and most relevant to the present case, it has also clarified the circumstances in which a member state may be considered to retain jurisdiction and/or have positive obligations even where there is a dispute regarding which state and/or other entity has effective control of an area within its territory. The case law below is

[1] This part of the document was prepared by Dr. Costas Paraskeva, Council of Europe expert.
[2] *Issa and Others v. Turkey,* No. 31821/96*,* 16/11/2004, paras.66-71.
[3] *Ilaşcu and Others v. Moldova and Russia*, No. 48787/99 [GC], 08/07/2004, para.311.
[4] *Banković v. Belgium and Others,* No. 52207/99 [GC], 12/12/2001, para 59-60; *Öcalan v. Turkey*, No. 46221/99, 12/03/2003, para.93; *Issa and Others v. Turkey,* No. 31821/96*,* 16/11/2004, para.67.
[5] *Assanidze v Georgia*, No. 71503/01, 08/04/2004, para.137; *Gentilhomme and Others v. France*, Nos. 48205/99, 48207/99 and 48209/99, 14/05/2002, para.20; *Banković v. Belgium and Others,* No. 52207/99 [GC], 12/12/2001, paras.59-61.
[6] *Banković v. Belgium and Others,* No. 52207/99 [GC], 12/12/2001, para.59.
[7] *Catan and Others v the Republic of Moldova and Russia*, Nos. 43370/04, 8252/05 and 18454/06 [GC], 19/10/2012, para.105; *Al-Skeini and Others v. the United King*dom [GC], No. 55721/07, 07/07/2011, para.131.

indicative of the Court's reasoning and a stark reminder that the specific facts of each case, even if it is one of many apparently similar ones, are determinative of the issue whether or not acts or omissions that constitute violations of the ECHR are imputable to one or more contracting states.

4. The Court first developed such an exception to territorial jurisdiction in the case of *Loizidou v. Turkey* (Preliminary Objections),[8] the first case to reach its docket following the 1974 Turkish invasion of Cyprus and occupation of the northern part of the island and the displacement of approximately 200,000 Cypriots from their homes and properties. In *Loizidou*, the Court found that the responsibility of a Contracting Party arises when as a consequence of lawful or unlawful military action, it exercises effective control of an area outside its national territory. Such control, whether directly through military presence or indirectly through a subordinate local administration, gives rise to the obligation to secure, in such an area, the rights and freedoms set out in the ECHR.[9]

5. In its judgment on the merits in *Loizidou*,[10] the Court addressed the issue of imputability to Turkey of the acts complained of by the applicant alleging ECHR violations, and concluded that Turkey's effective control over northern Cyprus, both by its military presence and through the policies of its subordinate administration, extends Turkey's jurisdiction to that part of the island thus rendering the violations complained of imputable to Turkey.

6. The Court affirmed this position in the inter-state case of *Cyprus v. Turkey*,[11] and all the Cyprus cases that followed,[12] reiterating that the controlling State, Turkey, has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the ECHR and those additional Protocols which it has ratified. Turkey will therefore be held liable for any violations of those rights.[13]

7. In *Ilaşcu and Others v. the Republic of Moldova and Russia*, the Court had occasion to discuss the notion of a State's territorial jurisdiction in the "exceptional situation" where a State is prevented from exercising its authority in part of its territory.[14] To conclude that such an exceptional

[8] *Loizidou v. Turkey*, No. 15318/89 (prel. Obj.), 23/03/1995, paras.62.
[9] *Loizidou v. Turkey*, No. 15318/89 (prel. Obj.), 23/03/1995, paras.62; *Cyprus v. Turkey,* No. 25781/94 [GC], 10/05/2001, para.76; *Banković v. Belgium and Others,* No. 52207/99 [GC], 12/12/2001, para.70; *Ilaşcu and Others v. Moldova and Russia*, No. 48787/99 [GC], 08/07/2004, paras.314-316.
[10] *Loizidou v. Turkey,* No. 15318/89, (Merits) 18/12/1996, paras.52-57.
[11] *Cyprus v. Turkey,* No. 25781/94 [GC], 10/05/2001, para.77.
[12] See for example: *Alexandrou v. Turkey*, No. 16162/90, 20/01/2009, para.20; *Solomonides v. Turkey*, No. 16161/90, 20/01/2009, para.24; *Orphanides v. Turkey,* No. 36705/97, 20/01/2009, para.23; In its *Xenides -Aresti* admissibility decision, the Court dismissed Turkey's objections on the grounds of lack of jurisdiction *ratione temporis* and *ratione loci and* observed that: "…no change has occurred since the adoption of the above-mentioned judgments by the Court which would justify a departure from its conclusions as to Turkey's jurisdiction… that the respondent Government continue to exercise overall military control over northern Cyprus and have not been able to show that there has been any change in this respect. In the light of the above, the Court considers that the Government's pleas on inadmissibility on the must be dismissed".
[13] *Cyprus v. Turkey,* No. 25781/94 [GC], 10/05/2001, paras.76-77.
[14] *Ilaşcu and Others v. Moldova and Russia*, No. 48787/99 [GC], 08/07/2004, paras.312-313.

situation prevails, the Court "must examine on the one hand all the objective facts capable of limiting the effective exercise of a State's authority over its territory and on the other the State's own conduct". This is of great importance as the Court points out that, under Article 1, a State has, in addition to the duty to refrain from infringement of the rights and freedoms guaranteed, "positive obligations to take appropriate steps to ensure respect for those rights within its territory". It was in the light of these principles that the Court discussed the issue of Moldova's responsibility and its positive obligations, within that part of its territory, the region of Transdniestria, over which Moldova, under international law, did not exercise authority and which was under the de facto control of the separatist "MRT" regime. It concluded that "… even in the absence of effective control over the Transdniestrian region,[15] Moldova still has a positive obligation under Article 1 of the Convention to take the diplomatic, economic, judicial or other measures that it is in its power to take and are in accordance with international law to secure to the applicants the rights guaranteed by the Convention".[16]

8. The Court further held that a State does not cease to have jurisdiction within the meaning of Article 1 even where part of its territory is under the *de facto* control of separatist local authorities "sustained by rebel forces or by another State".[17] The Court acknowledged that where the scope of a State's jurisdiction is thus *de facto* reduced, its responsibility towards those within its territory must be assessed in *light of its positive obligations.* Such a State must thus "*endeavour, with all the legal and diplomatic means available to it vis a vis foreign States and international organizations, to continue to guarantee the enjoyment of all the rights and freedoms guaranteed by the Convention"*.[18] It is not for the Court to indicate the measures to be taken so that a State's obligations under Article 1 are effectively discharged; nonetheless the Court must "*verify that the measures actually taken were appropriate and sufficient*" in the case at hand and it remains necessary for the Court to determine "*to what extent a minimum effort was nevertheless possible and whether it should have been made…**especially necessary in cases concerning an alleged infringement of absolute rights such as those guaranteed by Article 2 and 3 of the Convention***".[19]

9. Having looked at all the circumstances, the Court then stated that it was within the power of Moldova to take measures to secure the applicants' rights concluding that, "Moldova's responsibility was capable of being engaged under the Convention on account of its failure to discharge its positive obligations with regards to the acts complained of which had occurred after

[15] The Court had found that for the period under consideration, the Transdniestrian region remained under the effective control of Russia as its survival depended wholly on the military, economic, financial and political support that Russia gave it; consequently, the applicants in the case came within the jurisdiction of Russia and the violations alleged were imputable to Russia. The Court followed *Ilasçu and Others v the Republic of Moldova and Russia* in its judgment in the case of *Catan and Others v the Republic of Moldova and Russia*, Nos. 43370/04, 8252/05 and 18454/06 [GC], 19/10/2012 and found that Russia exercised effective control and decisive influence over the "MRT" during the period under consideration. (para.123) and therefore the applicants were within Russia's jurisdiction for purposes of Article 1 of the Convention.
[16] *Ilaşcu and Others v. Moldova and Russia*, No. 48787/99 [GC], 08/07/2004, para.331.
[17] *Ilaşcu and Others v. Moldova and Russia*, No. 48787/99 [GC], 08/07/2004, para.333.
[18] *Ilaşcu and Others v. Moldova and Russia*, No. 48787/99 [GC], 08/07/2004, para.333.
[19] *Ilaşcu and Others v. Moldova and Russia*, No. 48787/99 [GC], 08/07/2004, para.334.

May 2001".[20] In particular, the Moldovan government had failed to take all the measures available to it in the course of negotiations with the "MRT" and Russian authorities to put an end to the infringement of the applicants' rights.

10. In contrast, in the case of *Catan and Others v. the Republic of Moldova and Russia,* the Court found that even if, as in *Ilasçu,* Russia exercised effective control over the "MRT", the Moldovan Government had made such efforts to support the applicants that it had fulfilled its positive obligations in respect of these applicants.[21] Similarly, in its most recent judgment in the case of *Mozer v. the Republic of Moldova and Russia*,[22] the Court considered that the Moldovan Government had fulfilled "the second aspect of the positive obligation, namely to ensure respect for the applicants' rights"[23] and to support the applicant in asserting them.

11. The conclusions reached in *Ilaşcu* (and affirmed in *Catan and Mozer)* regarding the positive obligations of a State even within part of its territory over which it has no effective control, underline further the crucial importance of a State's responsibility within the meaning of Article 1 and the extent to which contracting states must endeavour to assert their jurisdiction within their territory even under the most adverse circumstances.

12. In the earlier case of *Assanidze v. Georgia*,[24] the Court explained that even though the Georgian authorities had taken all necessary procedural steps to secure the release of the applicant arbitrarily detained by the local Ajarian authorities and even though, "the matters complained of by the applicant were directly imputable to the local Ajarian authorities", nonetheless it was only the responsibility of Georgia that was engaged under the ECHR. Under Article 1 of the ECHR "the sole issue of relevance is the State's international responsibility", so that a violation of the Convention by any national authority is imputable to the Contracting State.[25] The Court insisted that despite the difficulties that contracting states might encounter "in securing compliance with the rights guaranteed by the Convention in all parts of their territory each State Party to the Convention nonetheless remains responsible for events occurring anywhere within its national territory".[26]

13. In the case of *Issa and Others v. Turkey*,[27] the applicants, Iraqi nationals, alleged that their relatives had been killed by Turkish military personnel whilst carrying out operations in the border area of northern Iraq. The Court

[20] *Ilaşcu and Others v. Moldova and Russia*, No. 48787/99 [GC], 08/07/2004, para.352; The Court found that Moldova had failed fully to comply with its positive obligation to the extent that it had failed to take all the measures available to it in the course of negotiations with the "MRT" and Russian authorities to bring about the end of the violation of the applicants' rights
[21] *Catan and Others v the Republic of Moldova and Russia*, Nos. 43370/04, 8252/05 and 18454/06 [GC], 19/10/2012, para.148.
[22] *Mozer v. the Republic of Moldova and Russia,* No. 11138/10 [GC]*,* 23/02/2016.
[23] *Mozer v. the Republic of Moldova and Russia,* No. 11138/10 [GC]*,* 23/02/2016*,* paras.153-155.
[24] *Assanidze v. Georgia*, No. 71503/01 [GC], 08/04/2004.
[25] *Assanidze v. Georgia*, No. 71503/01 [GC], 08/04/2004, para.146.
[26] *Assanidze v. Georgia*, No. 71503/01 [GC], 08/04/2004.
[27] *Issa and Others v. Turkey,* No. 31821/96*,* 16/11/2004*.*

considered whether the applicants' relatives were under the authority and/or effective control of the respondent state by virtue of the extra territorial military operations carried out by it in the general area where their bodies had been discovered. However, the applicants failed to establish "beyond reasonable doubt" that the Turkish troops were responsible for the killings and therefore Turkey did not exercise jurisdiction by virtue of the presence of its agents and the acts complained of were not imputable to Turkey.[28] The judgment illustrates the scrutiny applied by the Court to the factual circumstances of each case and the different likely outcomes especially in disputed and fragile border areas and security zones in conflict areas.

14. The Nagorno-Karabakh[29] conflict of the early 1990s resulted in hundreds of thousands of displaced persons and refugees and like the Cyprus conflict has remained unresolved and "frozen" for decades. As a result, thousands of applications against either Armenia or Azerbaijan, claiming continuing violations of Article 1 Protocol No. 1 to the ECHR and Article 8 of the ECHR, amongst other, are pending before the Court by applicants on both sides of the conflict.

15. In its recent judgment in *Chiragov and Others v. Armenia*,[30] where the applicants, Azerbaijani Kurds had fled their home and end up in the Lachin region, situated in a contested area adjoining Nagorno-Karabakh, and lived as internally displaced persons ("IDPs") elsewhere in Azerbaijan, the Court applied the principles of extra territorial jurisdiction[31] to find that Armenia had jurisdiction over the contested area. In its analysis of jurisdiction, the Court referred to the principles established in its case law under Article 1, and underlined that the exercise of a state's jurisdiction is primarily territorial,[32] and presumed to be exercised normally throughout the state's territory;[33] such exercise of jurisdiction is a necessary condition for a state to be held responsible for infringements of rights protected under the ECHR. However, the Court has recognized in its jurisprudence a number of exceptions to the above principles one of which is applicable in the present case.[34]

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[28] ibid. paras 79-81.

[29] Under the Soviet system Nagorno-Karabakh was an autonomous province of the Azerbaijan Soviet Socialist Republic with a 75% ethnic Armenian and 25% ethnic Azeri. Armed hostilities started in 1988, coinciding with an Armenian demand for the incorporation of the province into Armenia. Azerbaijan became independent in 1991. In September 1991, the Nagorno-Karabakh Soviet announced the establishment of the "Nagorno-Karabakh Republic" (the "NKR") and in January 1992 the "NKR" parliament declared independence from Azerbaijan. The conflict gradually escalated into full-scale war before a ceasefire was agreed in 1994. Despite negotiations for a peaceful solution under the auspices of the Organization for Security and Co-operation in Europe (OSCE) and the Minsk Group, no political settlement of the conflict has been reached. The self-proclaimed independence of the "NKR" has not been recognised by any State or international organisation. (See Factsheet – Armed Conflicts, September 2016).

[30] *Chiragov and Others v. Armenia,* No. 13216/05 [GC], 16/06/2015.

[31] *Chiragov and Others v. Armenia,* No. 13216/05 [GC], 16/06/2015, para.168.

[32] *Banković v. Belgium and Others,* No. 52207/99 [GC], 12/12/2001, para.61; *Ilaşcu and Others v. Moldova and Russia*, No. 48787/99 [GC], 08/07/2004, para.131; *Al-Skeini and Others v. the United Kingdom* [GC], No. 55721/07, 07/07/2011, paras.130-131.

[33] *Ilaşcu and Others v. Moldova and Russia*, No. 48787/99 [GC], 08/07/2004, para.312; *Assanidze v. Georgia*, No. 71503/01 [GC], 08/04/2004, para.139.

[34] See, for example, *Cyprus v. Turkey,* No. 25781/94 [GC], 10/05/2001, para.76; *Banković v. Belgium and Others,* No. 52207/99 [GC], 12/12/2001, para.70; *Ilaşcu and Others v. Moldova and Russia*, No. 48787/99 [GC], 08/07/2004, paras.314-316; *Loizidou v. Turkey,* No. 15318/89 (merits), 18/12/1996, para.52; *Al-Skeini and Others v. the United Kingdom* [GC], No. 55721/07, 07/07/2011, paras.130-131, para.138.

16. The Republic of Armenia, from the early days of the Nagorno-Karabakh conflict, has had a significant and decisive influence over the "NKR",[35] the two entities are highly integrated in virtually all important matters and this persists to this day. The "NKR" and its administration survives by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercises effective control over Nagorno-Karabakh and the surrounding territories, including the district of Lachin.[36] The military political financial and other support given by Armenia to the "NKR" means that it exercises effective control over Nagorno-Karabakh and the surrounding area (from where the applicants had fled) and consequently the violations complained of are imputable to Armenia.

17. In the case of *Sargsyan v. Azerbaijan*,[37] the applicants, ethnic Armenians, were forced to flee from their village of Gullistan because of heavy bombing by Azerbaijani forces, and subsequently resettled as refugees in Armenia. This was the first case where the Court ***decided that a state, which claimed to have lost control over part of its territory, still exercised jurisdiction over it.*** The Grand Chamber concluded that as the village from which the applicants had fled is situated in the internationally recognized territory of Azerbaijan, the presumption of jurisdiction applied.[38] Unlike Moldova, in *Ilasçu and Others,* which did not exercise authority over part of its territory because it was under the effective control of the separatist regime of the Moldovan Republic of Transdniestria ("MRT"), no other regime or state had effective control over Gullistan. Adopting its analysis in *Assanidze v. Georgia,*[39] the Court held that for purposes of Article 1, Azerbaijan had jurisdiction over the disputed area despite any difficulties in exercising the state's authority at a practical level.[40] Consequently, the violations of their rights alleged by the applicants in the case are imputable to Azerbaijan.

18. The case law briefly outlined above is highly relevant to issues currently raised regarding the territorial jurisdiction of Ukraine over the TOT and the question of whether or not Russia has effective control over the entire TOT. These are issues that cannot be answered in the abstract or in general terms but, as the jurisprudence of the Court clearly illustrates, each case is decided and limited by its own facts. Until such time as the Court rules on these questions, the people of TOT are entitled to protection, to the extent that is possible for Ukraine, (see above positive obligations of states), of their rights and freedoms under the ECHR. In that respect, PACE Resolution 2133(2016) on *Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities* urges the authorities to "… make easier, as far as is in their power, the daily life of the inhabitants of the territories outside their control and of the displaced persons from these areas

[35] The Nagorno-Karabakh republic ("NKR") is an unrecognized republic in the South Caucasus.
[36] *Chiragov and Others v. Armenia,* No. 13216/05 [GC], 16/06/2015, para.186.
[37] *Sargsyan v. Azerbaijan*, No. 40167/06 [GC], 16/06/2015.
[38] *Ilaşcu and Others v. Moldova and Russia*, No. 48787/99 [GC], 08/07/2004, para.312.
[39] *Assanidze v. Georgia*, No. 71503/01 [GC], 08/04/2004, paras.145-150.
[40] *Sargsyan v. Azerbaijan*, No. 40167/06 [GC], 16/06/2015, para.150.

by reducing administrative burdens in access to pensions and social allowances and by facilitating the inhabitants' access to justice …".

Comments concerning decentralisation and the European Charter on Local Self-Government[41]

According to the draft law No. 3593-d 'on Temporary Occupied Territory of Ukraine', during the "occupation" (the issue of occupation vs. effective control will not be dealt with):

- public authorities do not function in the temporary occupied territories;
- activities of the occupation administration are illegal and their acts are void (N.B. Refusal to accept even basic documents concerning personal status such as birth, death or marriage certificates would violate Article 8 of the ECHR and contradict international standards[42]);
- the nationwide and local elections, as well as a referendum cannot be conducted[43] in the temporary occupied territory.

Chapters II and III of the draft law introduce special measures and regulations in the post-conflict environment after the "de-occupation" of the temporarily occupied territory: introduction of the martial law, creation of military administrations and further reorganisation of military administrations into local state administrations, postponement of elections, imposition of restrictions on certain categories of persons regarding the service in public administration.

First and foremost, the draft law undermines the right and the ability of local authorities to manage a substantial share of public affairs exercised by councils or assemblies[44], as well as the right to participate in the affairs of a local authority[45].

The introduction of the martial law *for a period no less than one year* and postponement of elections (*for a minimum time* of 2 to 6 years after the conversion of military into civil administration, which can only happen sometime after the end of the martial law) deprive the population of the de-occupied territory of mechanisms and instruments for influencing decisions affecting their communities. Establishing *a cumulated minimum* of 3 years before local elections in villages and small towns and 7 years before regional elections and participation in central elections is not in line with the European Charter. In practice, with no stipulation of a maximum amount of time, such situation can continue for a far longer and unknown period of time.

The government structures (military administrations, later to be converted into "local state administrations" (i.e. central government administrations in regions, raions, cities, settlements or villages, the Administration of the President in Crimea) will exercise powers of local councils depriving communities of representative democracy for an unknown number of years. Establishing central government administrations in cities, settlements and villages also seems to contradict the

[41] This part of the document was prepared by Dan Popescu, Special Adviser of the Government of Ukraine on decentralisation.
[42] See para 45 of LOIZIDOU v. TURKEY JUDGMENT, European Court of Human Rights
[43] Articles 3, 4 and 8 of the draft law No. 3593-d 'on Temporary Occupied Territory of Ukraine'
[44] Article 3 of the European Charter of Local Self-Government
[45] Article 1 Para 2 of the Additional Protocol to the European Charter of Local Self-Government

Ukrainian Constitution, which only provides for such administrations in oblasts and rayons.

In short, it can be assessed that almost all substantial articles of the European Charter on Local Self-Government are violated, so a detailed examination of each of them does not need to be conducted. While exceptional circumstances can justify a limited-time suspension of the implementation of some provisions, an open-ended (time-wise) suspension of the implementation of the Charter in these regions after the "de-occupation" is not acceptable.

The draft law severely limits the access of the population of the de-occupied territory to public office and employment, in particular, Article 25 para 4, which is at odds with the international law[46], deprives local population of the right to be appointed for civil service positions in local state administrations *"persons who were permanently residing in the temporary occupied territory…cannot be appointed for civil service positions of the A and B categories*", in addition to Article 34 which prohibits the holding of certain positions in the civil service and in the service of local self-government bodies after de-occupation and restoration of local self-government bodies.

Presumably, these 'lustration' measures are aimed at protecting the democratic society and public order from threats that could be potentially posed by persons closely associated with the previous occupation administration. However, the proposal to include in these measures extensive categories of persons to be banned from public service seems to be unfounded. Lustration should concern only positions which may genuinely pose a significant danger to human rights or democracy. Moreover, the lustration procedure should respect the guarantees of a fair trial (the right of defence, the presumption of innocence and the right to appeal to a court must be guaranteed; guilt must be proven in each individual case)[47].

Local democracy is essential for building strong and efficient societies, for creating prosperous communities, "where people like to live and work, now and in the future[48]". Strengthening citizen participation and representation mechanisms in a post-conflict and fragile environment could help to strengthen confidence and trust in government, build sustainable peace and facilitate social reintegration and cohesion. Local self-government could give voice to the local population, avoiding social exclusion and polarization. Lack of access to participative and representative democratic mechanisms could potentially be a cause for peace fragility, tensions and conflict escalation in the future. Eliminating all self-governing rights of local population will not lead to confidence building, de-escalation of tensions and to increasing the likelihood of a peaceful future in Ukraine.

[46] Article 21 Para 2 of the Universal Declaration of Human Rights reads *Everyone has the right to equal access to public service in his country;* Article 25 of the International Covenant on Civil and Political Rights*:*
Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:
(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
(c) To have access, on general terms of equality, to public service in his country.
[47] Venice Commission Interim Opinion 'on The Law On Government Cleansing (Lustration Law) Of Ukraine' CDL-AD(2014)044 § 103-104
[48] Final declaration of the Third Council of Europe Summit of European Heads of State and Government, Warsaw, 2015