

SECRETARIAT GENERAL

**DIRECTORATE GENERAL OF DEMOCRACY AND
POLITICAL AFFAIRS**

**DIRECTORATE OF DEMOCRATIC
INSTITUTIONS**



Strasbourg, 30 July 2010
(English only)
DPA/PAD 1/2010

REPORT
**on Compliance of the Ukrainian Legislation with the Principles of
the European Charter for Local Self-Government**

Secretariat note

The present report was prepared by the Directorate of Democratic Institutions, Directorate General of Democracy and Political Affairs in co-operation with Dr Vadym Proshko, a Ukrainian member of the Group of Independent Experts of the Congress of Local and Regional Authorities of Europe, and Prof Gérard Marcou, University Paris 1 Panthéon-Sorbonne, Director of GRALE, France.

This study, prepared by experts of the Council of Europe Programme “Strengthening Local Democracy and Support to Local Self-Government Reforms in Ukraine” is the first one to review systematically Ukrainian legislation in the light of the European Charter of Local Self-Government. The document could be very useful for developing a new reform agenda aimed at achieving full compliance of legislation with the Charter provisions. In this regard, it is important to underline the shortcomings of the Ukrainian legislation with regard to the requirements of the Charter.

Only the main part of the Charter has been analysed. Some paragraphs with no comments are not included. The official translation of the Charter into the Ukrainian language from the official website of the Parliament of Ukraine is considered as the Ukrainian text of the Charter.

1.1 Article 1. The Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 12 of the Charter.

1.1.1 The European Charter for Local Self-Government (hereinafter referred to as the Charter) was ratified by Ukraine on 15 July 1997 by the Law of Ukraine “On Ratification of the European Charter for Local Self-Government”. According to article 9 of the Constitution of Ukraine, conclusion of any international agreement which conflicts with the Constitution is possible only after the adoption of amendments to the Constitution. No analysis on compliance of the provisions of the Charter with the Constitution was prepared, and there are no conclusions of the Constitutional Court of Ukraine on this issue.

According to the Constitution of Ukraine and Article 19 of the Law of Ukraine “On International Agreements of Ukraine” the Charter was integrated into national legislation and its provisions take precedence over provisions of national legislation.

Although the Charter is considered as having direct implementation in countries where the constitution accords international agreement provisions precedence over domestic legislation, as is the case in Ukraine and in France, it is in practice very unlikely because the Charter is written in terms of principles that have yet to be interpreted. Since there is no court at the European level to provide an authoritative interpretation, there are very few countries where national courts refer directly to the Charter in their rulings. In this regard, it would be recommended to the Constitutional Court of Ukraine to interpret the main provisions of the Charter and their compliance with the Ukrainian legislation.

2.1. 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.

2.1.1 In general the activities of local self-government (LSG) bodies are mentioned in 27 articles of the Constitution. Instead of the term “public authority”, Ukraine legislation refers to the phrase “state authority and local self-government”. The key articles on the local self-government issues are art. 7, art. 118, 119 and art. 140-148.

In addition to the Constitution, the activities of LSG bodies are regulated by the laws of Ukraine “On Local Self-Government in Ukraine”, “On the Status of Members of Local Councils”, “On the Service in Local Self-Government Bodies”, “On Local State Administrations”, “On Associations of Local Self-Government Bodies”, Budget Code and

hundreds of sectoral laws. It should be noted that the Constitutional Court provided 55 interpretations of the Constitution of Ukraine. Out of them 16 concerned articles 118, 149, 141 and 142, which proves its inconsistency and imperfection.

As has already been noted, Ukraine is bound by the Charter, a treaty it has signed and ratified, but the Constitution of Ukraine remains the supreme law in the domestic legal order. Therefore, assessment of Ukrainian legislation in the light of the Charter should reconcile the interpretation of the Constitution with the Charter. In case of obvious contradiction, the Constitutional Court would be ready to provide the relevant interpretations and possible recommendations on the revision of the Constitution in order to ensure compliance with the Charter. Constitutional reform has been contemplated for several years, and the current government is making plans to implement it in the near future.

3.1. Article 3. Concept of local self-government. 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

3.1.1 The English term “local authorities” is translated as “local self-government bodies”. At the same time another translation of this term is used – “local authorities” (“*місцеві влади*” in Ukrainian) (e.g. Congress of Local and Regional Authorities). The English phrase “under their own responsibility” (*нід власну відповідальність* in Ukrainian), in the Ukrainian official version is translated as “within their competence”.

3.1.2 The Constitution of Ukraine provides another definition of LSG (art.140): “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 several villages, settlements and a city — to independently resolve issues of local character within the limits of the Constitution and the laws of Ukraine”.

The problem here is not related to the definition of LSG by the Charter¹ and by the Constitution of Ukraine, but rather to the legal personality of LSG bodies that results in less power for the

¹ Comparison of the various linguistic versions of the Charter may create some difficulties for the interpretation of the Charter. For example, where the English version refers to “local authorities”, the French version refers to “collectivités locales”; in the French legal language, “authority” is usually linked with administration, rather than with local government (with its political meaning). Where the English version refers to “powers and responsibilities”, the French version uses the word “competence”. To describe the matter of the activity of local government, the English law makes use of the words “function”, “powers” and “duties” (see G. Marcou, *Les compétences des collectivités locales. L’étendue et la nature des compétences des collectivités locales dans les Etats membres du Conseil de l’Europe, Rapport pour le CDLR (Comité directeurs des pouvoirs locaux et régionaux), Conseil de l’Europe, Strasbourg, 2008*). LSG, as the basic concept of the Charter is given in the French version as “autonomie locale”, whereas French law considers this expression as equivalent to the constitutional concept of “libre administration des collectivités locales”, currently used in the decisions of the Constitutional Council. In French legislation, there is no difficulty with the expression “territorial community”; it is reflected in the Charter by the expression “collectivité locale”, as the subject of the self-government rights. This is even more so in Sweden, where the Constitution states that the citizens exercise their sovereignty rights also at the municipal level when they form the local government bodies (chapter 1, article 1). On the contrary, in English law, the councils, not the community, are legal subjects of self-government rights, because they are conferred upon them by parliament. A similar position, however with differences, is followed in Russia and in Ukraine, where not only the councils, but also all local government bodies, including the administration (in the Russian law of 2003) are legal subjects.

executive bodies and in problems in the assignment of the property rights. A more serious problem is the confusion of the municipal bodies with settlements. This problem should be solved if the reform establishing “administrative territorial units” covering the whole territory is implemented.

3.1.3 The wording of the Constitution denies LSG at oblast and rayon level its status as a legal entity. Only a one-level LSG scheme is stipulated which includes the village, the settlement and the city. In addition, all local self-government entities have equal rights and, accordingly, equal responsibilities. These are not dependent on the number of residents and hence financial, organisational, material and human capacity. Implementation of the principle of subsidiary has either been complicated or completely prevented under conditions when local governance responsibilities which cannot be efficiently implemented by the bodies of a lower level are delegated to local self-government bodies of a higher level.

3.1.4 The provision of art. 143 of the Constitution enabling territorial communities to exercise their local-governance functions directly is purely declarative as no mechanisms exist for this. Public meetings, local initiatives, public hearings provided by the Law are, according to their definition, consultative mechanisms, and the only possible tool of direct democracy - referendum - is too complicated.

3.1.5 The concept of a territorial community makes no legal sense because a new entity is integrated into the sphere of legal relations, and this entity does not have the status of a legal entity and technically cannot hold it.

3.1.6 Mention should also be made of the numerous unconstitutional and illegal “incorporated” communities when a settlement or a town is incorporated into a larger town/city and a citizen is deemed member of both communities, and can therefore elect two local councils, two mayors, and both the rights and responsibilities of these two authorities are not distributed by law or any by-law.

3.2 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 With regard to the oblast, rayon, Kyiv and Sevastopil councils art. 119 of the Constitution stipulates the following: “The executive power in oblasts and rayons, in the Cities of Kyiv and Sevastopil is exercised by local state administrations”. This effectively prevents councils from their own executive bodies. In addition, the Law “On Local Self-Government in Ukraine” requires that oblast and rayon councils must delegate a number of own responsibilities to oblast and rayon administrations (art. 44).

The Law “On the Capital City of Ukraine – Hero City of Kyiv” provides that the Kyiv municipality and rayon in the city councils establish their own executive bodies: “Kyiv City and rayon in the city councils have own executive bodies, established by the Kyiv City Council and the rayon in the city councils accountable and subordinate to respective councils” (art. 10) and at the same time delegate to respective state administrations a number of their responsibilities not stipulated by law: “Local state administrations are accountable and subordinate to the respective councils as regards to responsibilities delegated to them by

respective councils” (art. 6), thus councils have two executive bodies. This situation is unacceptable from the point of efficiency of administration, and by now no executive bodies have been established by the councils in the rayons of Kyiv.

As for Sevastopil, the Law on this city has not been adopted and there is no legal provision for relations between councils and the rayon state administrations in the city and the establishment of executive bodies of councils.

In this regard, the CoE Congress Recommendation 102 (2001) expressly states that, “F. With regard to executive bodies of local and regional authorities, it is essential that all local and regional councils, including the cities of Kyiv and Sevastopil, further to necessary amendments to the constitution, have their own executive bodies (governments politically accountable to them) and administrations (personnel). This would represent a concrete implementation of Articles 3.2 and 6.1 of the ECLSG”.

To summarise, Ukraine would comply with its obligations under the Charter to a greater extent if its Constitution and law provided the possibility for rayon and oblast councils to form their own executive bodies. Special attention should be paid to the issue of the division of competences between these new executive bodies and local State administrations at rayon and oblast levels.

3.2.2 Article 143 of the Constitution stipulates that the right to LSG is exercised by a territorial community “directly or through local self-government bodies established by them”, but the Constitution does not specify whether it refers to representative bodies only or to executive bodies of LSG as well. The analysis of the Law on LSG demonstrates that executive bodies of local councils have own competence for which they are not accountable to the council which created them, thus the third system of LSG appears and is exercised by executive bodies of LSG.

3.2.3 The Charter defines councils as a single entity of LSG with full responsibility. The Ukrainian Constitution provides that a village, settlement and city mayor is entitled to chair the meetings of the council. The question is: does the number of rights of a mayor (drafting an agenda, exclusive right to suggest the personnel of the executive committee, almost exclusive right to put into effect decisions of the council, etc.) limit the rights of the council?

4.1 Article 4. Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be constitutional or statutory. However, this provision shall not prevent local authorities from being attributed powers and responsibilities for specific purposes in accordance with the law.

4.1.1. Article 143 of the Constitution provides that territorial communities or LSG bodies “manage the property that is in communal ownership; approve programmes of socio-economic and cultural development,² 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”. The Law on LSG and other

² No Ukrainian law provides definition of “a programme of socio-economic and cultural development”.

laws establish the scope of exclusive competence of a council and the competence of its executive bodies.

4.2 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.

4.2.1 The Constitution conflicts with this provision of the Charter because it stipulates that LSG bodies are responsible exclusively for “issues of local importance ascribed to their competence by law”. According to the provision of the Charter, activities of LSG bodies are considered as politically independent activities when independently and under their own responsibility key crucial local problems are identified and solved in the rapidly changing world; without such a provision local self-government bodies shall carry out only the tasks assigned by central authorities.

4.3 Public responsibilities shall generally be exercised, in preference, by those authorities which 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.

4.3.1 Translation issues: term “municipal” (*муниципальний in Ukrainian*) does not exist in the Ukrainian legislation. The word *public* – (*публічний in Ukrainian*) is translated in art. 3.1 as *social*.

4.3.2 This is one of the basic principles underlying the establishment of public authorities – the principle of subsidiarity. It comprises two parts – delegation of responsibilities to the level closest to citizens, but only if the level has the capacity to fulfil the responsibility efficiently. According to the concept all “municipal” responsibilities are attributed to the community level. These responsibilities comprise such huge sectors as the municipal economy, education, health care, culture, environmental protection etc. Huge responsibilities conferred on the community level represent a positive aspect of the Ukrainian legislation and practice. The solution is not to diminish these responsibilities, but rather to carry out the territorial reform in order to establish at the municipal level administrative territorial units that have the capacity to implement their responsibilities.

4.4 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.

4.4.1 There are some problems with the implementation of this norm in Ukraine. According to the sectoral approach to organisation of public authorities, the powers given to LSG bodies are managed and limited by regulatory documents of the Cabinet of Ministers, sectoral ministries and institutions including letters and telegrams. Thus on the one hand, the regulatory powers of the government and of ministers restrict the discretion of LSG. On the other hand, it is not possible to deprive them of these regulatory powers, otherwise the risk is to have local governments by-passing or distorting national legislation. However, it belongs to the Verkhovna Rada to decide to confer upon local governments the power to regulate specific issues (for example establishing the local plan). It is important to note that this is usual in many European countries.

4.5 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.

4.5.1 According to the Charter, the delegation of powers envisages a concrete entity which delegates powers (central or regional bodies) and bears responsibility for execution of these powers, and delegation of powers to LSG bodies – according to article 3.2 – is explicitly to the council. According to the Constitution (art. 143) “certain powers of bodies of executive power may be assigned by law to bodies of local self-government.” The Law on LSG explicitly stipulates that powers are delegated to the executive bodies of councils.

The distribution of powers of executive bodies of councils is set out in articles 27-40 of the Law. In these articles the number of own (self-government) powers of executive bodies of the village, the settlement and the city councils amounts to 77, and the number of delegated powers amounts to 85. It should be noted that these numbers must be increased by hundreds of other powers, mainly delegated by sectoral legislation.

When exercising delegated powers: “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.”(Constitution, art. 143.4); “Executive bodies and village, settlement, city, rayon in the city councils...on the issues of delegated powers of executive authorities are under the control of the respective bodies of executive power.” (Law, art. 11.2).

Article 26.15 of the Law on LSG sets out the exclusive powers of councils such as the “withdrawal of acts of executive bodies of councils which do not comply with the Constitution or laws of Ukraine, other legislative acts, decisions of the respective council adopted within its competence”. This provision is more clearly laid down by art. 59.9 of the Law: “Decisions of the executive committee of the council on the issues under competence of executive committees of the council may be reversed by the respective council”. This means that the competence of the council does not cover the decisions of the executive committee concerning delegated issues, and hence in most cases the executive committee acts not as the body of the council, but as a state authority. A possible solution to this problem would be to transfer some of these duties into the own competence of the local authority, or to assign them to State authorities, in order to minimise the bulk of these delegated tasks.

4.6 Local authorities shall be consulted, insofar as is possible, in due time and in an appropriate way on the planning and decision-making processes for all matters which concern them directly.

4.6.1 Art. 7.4 of the Law of Ukraine “On Associations of Local Self-Government Bodies” states: “Public authorities when taking a decision on local and regional development and when determining the main spheres of the state policy on local self-government cooperate with associations on the basis stipulated by Law.” If the Charter stipulates all the issues concerning LSG bodies directly, the Law makes provision only for the main spheres of state policy on LSG. In practice, even the law is not implemented: for example, LSG associations were not consulted when the 2010 Budget Code was drafted and adopted.

5.1 Article 5. Protection of local authority boundaries

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.

5.1.1 This article may become a serious obstacle in the event of “forced” enlargement of communities in the framework of the administrative-territorial reform. However, in 2001 the provisions of this article were simply ignored when the number and borders of rayons in the City of Kyiv changed.

6.1 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.

6.1.1 In the Charter the words “shall be able to determine” should have been better translated: not “have an opportunity to determine” (*мають можливість визначати in Ukrainian*), but “must be able to determine” (*повинні мати змогу визначати*).

6.1.2 According to the explanatory report to the Charter: “Limited specific requirements in central or regional laws concerning, for example, the establishment of certain committees or the creation of certain administrative posts are acceptable but these should not be so widespread as to impose a rigid organisational structure.”

According to the Law on LSG (art. 10.5): “The number of personnel of local self-government bodies is determined by the respective council within the limit of general number according to typical staff adopted by the Cabinet of Ministers of Ukraine.” The Budget Code restricted expenditure on local self-government bodies to a so-called “first basket” i.e. to the expenditure determined and regulated by state. In this regard, one of the main objectives of the decentralisation reform in Ukraine should be to restrict regulations by central government agencies and give more discretion to municipalities. This objective could be achieved by implementation of the new instruments of State Regional Policy: policy guidance and evaluation rather than detailed regulations and regularity control. This requires also major changes to administrative culture and practice.

6.2 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.

6.2.1 The conditions of service are stipulated by the Law “On the Service in Local Self-Government Bodies”, they comply with the requirements of the Charter overall. However, it should be noted that the number of LSG employees comprise only a small circle of administrative employees of the executive body of the council. The Law does not cover employees dealing with practical municipal responsibilities – teachers, doctors, employees of communal enterprises etc. They may be included in the local government service, or rather made subject to national regulations, to the extent that they are in charge of national public services managed locally. No system of retraining and training of local self-government employees is established, either at the state level or at the level of LSG associations.

7.1 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.

7.1.1 The conditions under which responsibilities are exercised are stipulated by the Law “On the Status of Deputies of Local Councils” and mainly comply with the requirement of the Charter.

7.1.3 Incompatibility is reduced to the incompatibility of offices of the elected representative – to be a member of another council or hold a position of a city settlement, as village mayor as well as be an employee of the executive committee of “their own” council. The law does not prohibit a council member from working at the executive administration of the council. Often in the Ukrainian councils a head of a subdivision of an executive body holds a position of not only a member of the council, but also chairs the respective permanent commission of the council, i.e. controls own activities.

8.1 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.

8.1.1 The specific laws on LSG bodies do not stipulate the special procedures of supervision. Supervision of LSG bodies’ activities is exercised by the state supervision bodies. In addition, as a rule no special features of supervision of LSG bodies are stipulated. The State Treasury is an additional supervisory body through which all the financial flows of an LSG body pass.

8.2. 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.

8.2.1 The term “expediency” from the original text of the Charter is translated as “timeliness”, though it would be better to translate it as “expediency” (*своєчасність*).

8.2.2 The absence of special procedures, the predominance of “delegated” powers, its functional overlapping with own responsibilities enable the activities of local self-government bodies to be supervised as much and as long as they like.

8.3 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.

8.3.1 The notion of proportion is not stipulated by the Ukrainian legislation.

9.1 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.

9.1.1 The budgetary system of Ukraine is constructed in such a way that “adequate financial resources” are very unpredictable and dependent on the decisions of central authorities, so that local self-government bodies cannot and are not entitled to consider own budgets before the state budget is finally adopted (Art. 75 of the Budget Code).

9.2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.

9.2.1 The Constitution despite detailing all activities of LSG bodies does not provide them with adequate financial resources. The real state of financial provision of LSG can be seen from art. 94.2 of the Budget Code: “Financial index of budgetary provision shall be determined through division of total financial resources by the number of residents or consumers of social services etc.” This means that the calculation is based not on the cost of carrying out responsibilities, but on the share of the consolidated budget provided by the State which usually covers only “protected” budget items – salary, maintenance of premises etc.

Under such conditions, “disposing freely” of adequate financial resources is not possible.

9.2.2 The Constitution states the following concerning the delegated powers (art. 143): “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.” However, legislation does not provide the mechanism and procedures for calculation of expenses required for the exercise of delegated responsibilities, and the State budget does not have any item transferring a share of tax to LSG bodies for this purpose.

9.3 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.

9.3.1 According to different estimations, the volume of income of local budgets from local taxes ranges from one to three percent.

9.4. 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.

9.5 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.

9.5.1 The budgetary system of Ukraine is constructed in such a way that budgetary equalisation procedures refer not only to “weaker” LSG bodies but to all of them without any exception. The volume of a so-called “first basket” from which most of the responsibilities of local self-government are financed is strictly determined by the state. Lack of funds in this basket are reimbursed through state grants, “extra” income is recalled from the local self-government bodies where income exceeds expenditure.

9.6 Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

9.6.1 The English “Local authorities shall be consulted” should be translated as “Local authorities shall be consulted” but not “informed”. There is no clear mechanism for holding consultations in Ukraine.

9.7 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.

9.7.1 Basic grants to LSG bodies – equalisation transfers – are transferred without any allocation of funds for various projects, though they are allocated according to the sectors of use that LSG bodies have as suggested from above, “typical” local budget for main expenditures: education, health care, culture etc.

9.8 For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

9.8.1 This requirement of the Charter is mostly satisfied.

10.1 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.

10.1.1 There are two ways of consortia formation stipulated by law. Firstly, “On the basis of agreement, territorial communities of villages, settlements and cities may pool their 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.” (art. 143 of the Constitution). No specific procedures for establishment of such corporations by public authorities are provided. They should be established under corporate law. Secondly, joint projects may be implemented by rayon and oblast councils as “local self-government that represent the common interests of territorial communities of villages, settlements and cities” (Art.140 of the Constitution). In addition, the required funds are provided by local budgets to oblast or rayon budgets. There is no legal provision for this type of co-operation of local authorities .

11.1 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.

11.1.1 The conflict here is that both the council and its executive committee are legal entities, which act on the same territory and serve the same residents. The executive committee has its own scope of responsibilities (delegated) for which it is not subordinate to the council, although its activities in this sector may conflict with council policy. In this case the council appeals to the court and both parties can be represented by only one entity – a city, settlement, village mayor (“On Local Self-Government in Ukraine”, art. 42.14).

CONCLUSIONS

1. The requirements of the Charter stipulated by articles: 3.1, 3.2, 4.2, 4.3, 4.4, 4.5, 4.6, 6.1, 8.1, 8.3 are not implemented, entirely or partially, in the Ukrainian Constitution, laws and practice. The current budgetary system in its entirety does not comply with the requirements of article 9.
2. The Congress of Local and Regional Authorities of the Council of Europe in its Recommendation 102 (2001):

6. Regrets:

- a. that in the context of a centralised public administration system, some Ukrainian political forces are still opposed to any reform involving the decentralisation of public powers on the basis of the subsidiarity principle (Article 4.3 of ECLSG);*
- b. that the laws and [articles of the] constitution regarding local and regional self-government are often unclear and badly implemented;*
- c. that over the last two years, the above-mentioned legislative deficit and disorder contributed in practice to create a serious democratic as well as rule of law deficit which represents a worrying step back.*

Unfortunately in the nine years following adoption of this Recommendation almost none of its items has been implemented.

3. In the process of implementation of the reform of local self-government in Ukraine fundamental actions are not possible if the Constitution is not amended. The too detailed description in the Constitution of structures and mechanisms and the lack of principles almost preserves the existing system.

The Council of Europe therefore recommends that the Ukrainian authorities begin the process of modernising the LSG provisions in the Constitution. It would be important to:

- hold the Parliamentary Hearings on the current state of the implementation of the European Charter of Local Self-Government in Ukraine and its compliance with Ukrainian Legislation, and ensure participation of the members of the Constitutional Court, national associations of LSG bodies, and other main stakeholders in order to elaborate the concrete recommendations on possible revision of the Constitution and other relevant legislation;
- give full rights of local authorities to oblast and rayon councils;
- implement in full the subsidiarity principle;
- re-organise the system for delegating responsibilities/competencies;
- revise the budgetary system to ensure local self-government bodies have the real capacity to act autonomously and under their own responsibility;
- enable the legislator to improve the system, and avoid excessive details in the new Constitution.