Note on the review of the provisions of the Constitution of Ukraine on the territorial organisation of the State and local self-government

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The Constitution of Ukraine of 1996 has recognised local self-government rights to citizens in their territorial communities. It includes three chapters on this matter: chapter 9 on the territorial organisation of Ukraine (art.132 and 133), chapter 10 on the autonomy of the Republic of Crimea (art.134 to 139), and chapter 11 on local self-government (art.140 to 146). But we have to consider additionally the chapter 6 on the Cabinet of Ministers and other organs of the executive power. According to article 118 of this chapter, the executive power is exercised by the local State administration in districts, regions and in the cities of Kiev and Sevastopol. Moreover, several other provisions concern local government in the first part on "general principles" and in the chapter on the Verkhovna Rada. All these provisions have been the basis for the local self-government law of 1997, still in force with various amendments, and for other pieces of legislation on local government institutions and on the local State administration.

Despite this constitutional commitment for decentralisation and local self-government, constitutional provisions have proved in recent years to be an obstacle to any substantial reform deemed to implement local self-government in Ukraine and to comply really with the provisions of the European Charter of Local Self-Government, ratified by the Republic of Ukraine. The constitutional review of 2004 contained several amendments to remove obstacles to further decentralisation, but finally these amendments were not adopted. In 2009 another draft law was prepared on amending the Constitution of Ukraine on local self-government matters, but these amendments, some of which were criticised by the Council of Europe, were again abandoned.

The Draft Concept on the reform of local government and of the territorial organisation of the power, circulated in March 2012 and supported by the Council of Europe, that should be approved by the Cabinet of Ministers, refers again to the necessity to pass constitutional amendments in order to implement the proposed reform concept. Such amendments should be passed in the second stage of the reform programme, between 2013 and 2015. President Yanukovich had mentioned the need of constitutional amendments in his speech to the Municipal Hearings of 2011, and his decree of 25 January 2012 (n°31) on the formation and the organisation of the
"Constituent Assembly", a political and social forum convened to discuss amendments to the Constitution, confirms this orientation.

Therefore, this is the time to introduce in the debate suggestions aimed at improving the constitutional framework of local self-government in Ukraine and facilitating the reforms that are needed.

Taking stock of the discussions that have taken place for many years in Ukraine and of the recommendations already formulated by the Council of Europe, we will first sketch a concept of the constitutional framework of local self-government that could support a new step towards decentralisation and local democracy in Ukraine. Then we will propose amendments to the Constitution, derived from this framework.

I. Proposed concept of the constitutional framework of local self-government

The relationships between constitution, legislation and local self-government have to be clarified, especially with regard to the commitment of Ukraine to the European Charter of Local Self-Government. Then, we have to take stock of several basic principles of the constitution of Ukraine that have never been disputed in the discussions of the last few years. Thirdly we will try to outline the local government system that seems to emerge from these discussions, with due consideration of the European experience. This will include the place and the functions of the local State administration in the context of the reform.

1. Constitution, legislation and local self-government

Ukraine has ratified the European Charter of Local Self-Government in 1998, two years after the promulgation of the Constitution of 1996 and one year after the first general law on local self-government, dated 1997. Whereas article 12 of the Charter gives States the possibility to select the paragraphs of the articles of the Charter that they adhere to, on the basis of a minimum, Ukraine is one of the countries that have decided to commit themselves for all paragraphs, and that have expressed no reserve. Ukraine has then endorsed all provisions of the Charter.

According to article 13, the Charter is applicable to all categories of local authorities existing on the territory of the High Contracting Party, unless this one has designated, at the time of transmitting the ratification instruments, the sole categories to which it is applicable. In the absence of such a designation, the Charter is applicable to all local authorities in Ukraine. However, due to the ambiguities of the Constitution of Ukraine regarding the concept of local authority, the scope of the application of the Charter is unclear. Indeed, the only local authorities stricto sensu are the cities,
villages and boroughs within which "territorial communities" (gromada) exercise their self-governing rights (art.140 of the Constitution). District (raion) and regional (oblasy) councils represent "common interests" of "territorial communities"; they are local self-government bodies (paragraph 4), but they are not local authorities in the sense of the Charter and, besides, they do not elect own executive bodies. The present status of district and regional councils is therefore a limitation to the scope of the application of the European Charter, and this has been discussed for many years. Nevertheless, and due to the conditions of the ratification of the Charter by Ukraine any reform establishing self-governing local authorities at the intermediate levels would extend the application of the Charter to these levels.

The Charter does not determine how the guarantees, institutions and tasks of local authorities should be shared between the constitution and the legislation of each country. But there should be a constitutional basis, as we can understand article 2 of the Charter: "The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution". According to further articles of the Charter, "basic powers and responsibilities" (art.4, par.1 - in the French version: "les compétences de base"), the administrative supervision of local government activities in order to ensure the compliance with the law and constitutional principles (art.8, par.1) and the principles of local self-government protected by judicial remedies (art.11) are provided by the constitution OR by the legislation. As a matter of fact, whereas powers of local authorities can be determined by constitutional provisions of European countries, matters of responsibilities are usually left to legislation, by contrast with the case of federal governments or of countries with regional autonomies where matters of the legislative power exercised by the regional authorities are determined by the constitution.

As a consequence, the constitutional provisions on local self-government in European countries, although quite different in terms of length, are focused on basic principles and powers and on institutional aspects of local self-government. Compared to other European countries, the provisions of the Constitution of Ukraine on local self-government are exceptionally detailed, may be too much detailed. The purpose of constitutional provisions on local self-government is to recognise local self-government rights and to protect them, to fix the basic structure of the territorial organisation of the government and to provide for the compliance with the law. Therefore, amendments to the Constitution of Ukraine should concentrate and streamline constitutional provisions on key issues of local self-government, and leave other issues to ordinary legislation.
2. Basic principles of the Constitution of Ukraine on local government to be maintained

Constitutional amendments on local self-government and on the territorial organisation of the State have to be based on several principles laid down in present constitution and that are supported by a large consensus.

- Art. 2, par.2: "Ukraine is a unitary State". This principle rules out any reform oriented towards a basic change in the constitutional nature of the regions (oblast) in Ukraine. However, this principle has to be reconciled with the arrangements of chapter 10 of the constitution of Ukraine on the Autonomous Republic Crimea. The constitution of the Republic has to be approved by the Verkhovna Rada of Ukraine and "legal normative acts" adopted by the Verkhovna Rada of the Republic are not qualified as laws (art.135) but as "regulations" (нормативне регулювання). Special status are also provided for the cities of Kiev and Sevastopol (art.133, par.3 and art.140, par.2).

Art.5, par.2, sentence 2: "The people exercises the power directly and through organs of State power and organs of local self-government". This means that local councils, as well as district and regional councils are directly a representation of the people, and not only an assembly established by law with the duty to manage administrative tasks. Sweden is the only other country in Europe where the Constitution gives such a broad interpretation of the people's sovereignty (1:1). It is therefore inconsistent that, at the same time, they are not entitled to form their own executive bodies.

Art.7: "In Ukraine, local self-government is recognised and guaranteed". Local self-government is therefore one of the general principles laid down by the Constitution of Ukraine.

Furthermore, we can infer from articles 140 that the local government system is based on settlements and on the first tier of local government, e.g. on the municipal level, since district and regional councils are only a representation of "common interests" of the various "gromada" within their boundaries. As we will see later the identification of the first local government tier to settlements is a limitation, but the principle that local self-government rights are exercised in first place at the municipal level reflects the idea that local authorities of the first tier are the basic level of decentralisation where citizens can exercise their local self-government rights.

Lastly, the existence of local State administrations is based on article 118: "The executive power in regions, districts, and in the Cities of Kyiv and Sevastopol is exercised by local state administrations". This article provides for extensive powers to these administrations. Heads of the local State administrations are appointed by the President of Ukraine on the basis of a proposal of the Cabinet of Ministers and they
are accountable to them. District and regional councils may express their distrust to the head of the State administration; the President is bound to remove him only if the no confidence resolution is voted by two-thirds of the members of the respective council, but this has never occurred until now. Article 119 details the tasks of local State administration. There have been discussions on the tasks of local State administration, and whether or not it should be maintained at the district level, but the principle of a State administration at the local level, at least the regional level, has not been disputed.

Therefore, we consider that the amendments to the Constitution should rely on the following principles: Ukraine is a unitary State; there are special status for the Republic of Crimea and for the cities of Kiev and Sevastopol; the main level for the exercise of the self-government rights of citizens is the municipal level; there is also a network of the State administration at the regional and eventually at the district levels.

3. Proposals for the constitutional framework of the local government system of Ukraine

These proposals will be based on the following principles:

- establishing a unified concept of municipality as the first tier of local government;
- establishing a unified concept of local authority;
- keeping a three tier system, due to the size of the country, with cities of district significance holding powers of municipalities and of districts;
- establishing districts and regions as territorial communities with own councils and elected executives;
- establishing a constitutional basis for the development of local democracy;
- maintaining a constitutional basis for the local State administrations and determining their key functions;
- establishing the financial basis of local self-government in the Constitution and the duty of the State to ensure equalisation between local governments;
- giving a constitutional basis to the legal protection of local self-government.

As a whole, the provisions of the constitution of Ukraine on local self-government and on the territorial organisation of government should be shorter than they are at present and leave more discretion to legislation.
3.1. A unified concept of municipality as the first tier of local government

The municipality should be the first tier of local government in Ukraine, and its area should not be limited to settlements. On the contrary, the boundaries of municipalities should be delineated in such a way that there is no part of the territory left outside of municipal boundaries. This is so in all European countries, and there is in Ukraine no such large unpopulated areas as it is the case in Russia, or in Canada, that can justify to leave the administration of these areas to the upper government level (the *raion* in Ukraine).

Basically, the *gromada* should coincide with the municipality, and not the contrary. This means that the constitutional provisions should facilitate the formation of municipalities with the capacity to perform local self-government functions. Nevertheless such provisions cannot be precise. The political guidance for legislation could result from a statement derived from the European Charter: municipal governments should manage a substantial part of public affairs under their own responsibility, or the from the principle that government matters are managed by municipal governments but in cases provided by the law.

This means that the distinctions between cities, boroughs and villages considered as different administrative territorial units by article 133 of the Constitution, should be removed. At present, article 133 gives the following list of administrative territorial units: “Систему адміністративно-територіального устрою України складають: Автономна Республіка Крим, області, райони, міста, райони в містах, селища і села” («The system of the territorial administrative structure of Ukraine consists in: the Autonomous Republic of Crimea, regions, districts, cities, inner city districts, boroughs and villages»). According to article 140, the territorial communities (*gromada*), as the communities of inhabitants, exercise their local self-governing right within the framework of these administrative territorial units (or the association of several villages). The distinction between cities, boroughs and villages makes sense only in a system where first tier units are based on the settlements, although it has at present very little practical consequences. Once a full coverage of the territory of the country with municipal boundaries is achieved, the municipality is characterised, not only by its population but also by the territorial jurisdiction of its local self-government bodies, including areas outside of the settlements. All municipalities should have equal powers, subject to provisions of special legislation for specific purposes, and to the status of cities of district significance that are in addition vested with powers exercised by distinct district self-government bodies.

The adoption in Ukraine of the modern concept of a municipality would have considerable advantages. First of all, this would extend the scope of the planning
powers of the municipal authorities, and hence facilitate development strategies, for housing, economic activities, leisure or environmental protection, and the balance between all activities in land use, whereas at present the local authority may depend on the district authority (at present a State administration). Secondly, this would enlarge the tax basis of the local authority and make possible to work out a property tax as own resource of municipalities.

Constitutional provisions do not refer to the territorial reform; such a policy cannot be a constitutional norm. We have only to take care that constitutional provisions will not become an obstacle to the territorial reform. Therefore, the provision of article 140, paragraph 1, that defines the territorial community (gromada) as the inhabitants of villages or of voluntary associations of several villages, should be removed, because the principle of voluntary association can be opposed to amalgamation procedures, even if they are based on a majority rule.

3.2. A unified concept of local authority

In a unitary State as Ukraine is, all local authorities have the same legal nature, there is no hierarchy between them and they are all subject to national legislation and to central government regulations issued on the basis of the law. Local authorities are established in order to realise the local self-government rights of citizens resulting from the Constitution and to perform local self-government tasks. This feature is common to all countries with two or three government levels and that have a unitary State structure. In such a structure, only the categories or levels of local self-government units are determined and can be protected by the Constitution, not each unit of a given category or level.

Then, it is inconsistent with the unitary State structure of Ukraine to have a list of regions (oblast) as a constitutional norm in article 133. Therefore, this provision should be deleted. Only in countries with a federal government there is a list of federal entities in the constitution, because they are supposed to be political bodies existing before the new constitution and constituent parts of the federation. In countries with regional autonomies, only regions with a special status have an individual constitutional recognition (as it is the case for Crimea in Ukraine).

Furthermore, the legal subject is the territorial community, not the institutions established by the law and that represent this community. Among West European countries, only in the UK local councils are legal subjects and not the local community they represent.
3.3. A three tier system

Due to the size of Ukraine, it seems justified to keep a three tier system of local government: municipality, district and region. Larger European countries all have three tiers of local government, or only two in some areas (because of local authorities may hold functions of two levels in urban areas); differences between them is not the number of tiers but their constitutional status and the question whether cities have access to the powers of the upper level.

The territorial reform at the first tier could make relevant, in a second stage, to reconsider the boundaries of districts and to diminish their number. But this option has no place in the Constitution. the only constitutional issue is whether the intermediate levels are listed in the Constitution (case of France, for example), or not and left to the legislation (case of Poland).

This concept does not rule out having municipalities of district significance and special status for the cities of Kiev and Sevastopol. The first ones would be equivalent to districts and the cities of Kiev and Sevastopol would be equivalent to regions. The Republic of Crimea would also be equivalent to regions, but with specific powers.

As already pointed out, in a unitary State the distribution of tasks among government levels is a legislative matter. The list of powers of paragraphs 1 and 2 of article 143 is confusing and unnecessary. It is confusing because it mixes legal powers, whereas not making clear the legal force of the decisions upon various "programme", and because the matters concerned by them are broadly mentioned. Therefore, these paragraphs could be deleted.

By contrast, the constitution could include the general competence clause for the municipal level; it is to be further discussed whether to extend it to the district and region levels or not.

3.4. Districts and regions as territorial communities with own councils and elected executives

Districts and regions should be recognised as territorial divisions within which citizens exercise their self-government rights through election and through other citizen participation procedures, and hence as territorial communities of their own.

At present, district and regional councils do not have the legal power and the administrative capacity to execute their decisions and regulations. They depend on the State administration. This issue has been discussed in Ukraine for many years and the new Draft Concept of the reform of local self-government and of the territorial organisation of the power includes the commitment to change this situation through
constitutional amendments. This means that the proposed constitutional amendments have to provide for the election by the district and regional councils of their own executive bodies, vested with the power to prepare and execute the decisions and regulations adopted by the respective councils. However the Constitution should not determine the mode of election, and leave it to the legislation.

3.5. Constitutional basis of local democracy

There should be a constitutional commitment to develop local democracy at all levels of local government.

Such a commitment should include the election of councils and their executive bodies, leaving to the legislation the determination of the electoral modus. It is also unnecessary to fix in the constitution the duration of the mandate of local councils and their executives. In case of any reform having an impact on this duration, it will be less difficult to adjust if this is a matter for the legislation and not for the constitution.

The constitution has also to provide for the direct participation of citizens in decision-making as an alternative to decision-making by the council, but without determining the participation procedures, and for the enforcement of the principles of transparency and accountability.

The principles of transparency and accountability are not only for citizens, but also for councillors, in order to give them the necessary powers for the accomplishment of their mandate.

The principle of transparency involves in first place the access to official information, the duty to work out the relevant information making possible to assess the relevance and the merits of the decisions of the local authority. The principle of accountability involves an appropriate audit system (internal and external) and can be extended through a recall procedure.

Again, the Constitution has to give a basis for legislative initiatives, but a mandate only in limited cases.

3.6. Constitutional basis for the local State administrations and its key functions

Decentralisation implies the transfer of numerous tasks from the State administration upon local governments. This has to be supported by the transfer of human and financial resources. But, this does not mean that the State administration should disappear from the local level. Indeed, in all countries with decentralised local government there remains a local State administration with supervisory functions and various categories of direct responsibilities.
In a unitary State, it does not belong to the Constitution to determine the distribution of functions between central and local government, and in federal governments or governments with regional autonomies the Constitution deals only with the determination of the legislative matters assigned to the national legislature and to regional legislatures. In unitary States, the distribution of tasks is not focused on legislation since there exists only one legislative power, at the national level. Therefore, it belongs to national legislation to work out the distribution of tasks in all public policy fields between central and local governments, and this requirement gives a crucial importance to sector legislation.

In Ukraine, at present, the existing State administrative bodies at the local level are of two kinds: the local State administration established in each district and each region, and the local branches of central executive bodies, e.g. ministries or State committees.

The Constitution has to set out the basic principles of the State organisation at the local level. For the present local State administration, and in particular for its head, there are two problems: the relationships with local self-government bodies and the relationships with local branches of central executive bodies. The main issues at stake are ensuring the implementation of central government policies, their coordination at the local level and the compliance with the law.

With the commitment to development the responsibilities of local self-government, a lot of operational tasks can be shifted upon local self-government bodies, but a number of them can still be implemented by the State administration because they are indeed only the local projection of national tasks, or because central government considers that it has to keep control upon them. As far as tasks are devolved on local self-government bodies, the local State administration will keep only a supervisory function. According to the European Charter of Local Self-Government, this supervision should be limited to the legality of the decisions (art.8, paragraph 2).

But, there is another challenge: the consistency of the implementation of the State policies locally would benefit from stronger authority of the head of the local State administration upon the heads of the local branches of the central executive bodies. This could be reflected in the Constitution, subject to some exceptions determined by the law. With the transfer of numerous tasks upon local self-government bodies, this should be less difficult to achieve than at present, and State offices at the local level could focus much more on broader policy issues rather than on operational tasks.
3.7. The financial basis of local self-government in the Constitution and the duty of the State to ensure equalisation between local governments

In the present constitution of Ukraine, the provision on the financial basis of local self-government is not sufficient and everybody recognises that there is no real financial autonomy of local self-government bodies. Article142 mentions "revenues of local budgets" and "other resources" in the list of the "material and financial basis of local self-government", but does not guarantee any kind of revenues. Paragraph 3 of this article provides that the State participates in the formation of local government budgets, and financially supports local self-government, but there is no precise commitment, especially for equalisation - although in practice we know that the budget code establishes a national equalisation system for a number of key functions managed by local authorities. The only commitment is to compensate the costs of State tasks delegated upon local self-government bodies (art.143, par.3).

The reform should give an opportunity to change that and establish a constitutional basis for local self-government finance. The constitution should recognise, as a minimum, that local authorities are entitled to own tax resources regulated by the law, and that they are entitled to a share of national tax resources commensurate to the standard costs of the functions that they have to perform. The Constitution should also include a commitment for an equalisation system aimed at ensuring equality before the law for all citizens as regards the services provided to them in execution of the law, and supporting economically deprived areas.

3.8. Give a constitutional basis to the legal protection of local self-government

Article 144 and 145 of the constitution of Ukraine are relatively protective of local self-government rights. Decisions of local self-government bodies can be set aside only on the ground of non compliance with the Constitution or with the law, and according to conditions established by the law (art.144). Local self-government rights are under judicial protection (art.145).

These provisions, however, concern only own local government tasks. As regards delegated tasks, these are performed under the control of the respective central executive bodies (art.143, last paragraph). This involves control on the merit of decisions and the power for central executive bodies to direct instructions to local authorities for these tasks.

This distinction between own and delegated tasks is in accordance with the European Charter of Local Self-Government (see: art.8, paragraph 2). The problem in Ukraine is the uncertainty of the distinction between own and delegated tasks, in sector legislation, and because of expenditure norms for the functions subject to equalisation
according to the budget code. This is a technically difficult issue that cannot be solved by constitutional amendments. One way of resolving this problem could be to replace traditional control by a fair auditing and evaluation system, making possible for central executive bodies to assess whether objectives are met by local authorities, as it has been developed in Sweden on the basis of the local government law of 1991.

II. Proposed constitutional amendments on local self-government

In this section we propose new drafts for articles of the Constitution of Ukraine.

We will keep the numeration of the articles of the present text of the Constitution, and review all articles where local government or the local State administration are mentioned. We rely on the official text in Ukrainian language. When no change is necessary, we will mention the article and indicate: "no change". This is in order to ensure the full coverage of the text of the Constitution.

In order to facilitate the appraisal of these proposals, we will work out a full draft also in cases where smaller amendments are possible. Changes will be in fat letters. This will also avoid inconsistencies resulting from linguistic difficulties.

The grounds for the proposed amendments are detailed in section I. The amendments proposed below will be followed by a short explanatory note only in cases when there is no comment in section I.

Amendments are only on local government and local State administration, also they are in articles on other matters that mention local government or local State administration.

Art. 2: no change

Art. 5: no change

Art. 7: no change

Art. 14: amend paragraph 2 as follows:

"The right of property to land is guaranteed. This right is acquired and realised by citizens, legal persons, local governments and the State, exclusively in accordance with the law".

Explanatory note:
Article 142 of the Constitution mentions movable and immovable properties as parts of the material basis of local self-government in Ukraine. It is therefore necessary to recognise to local self-governments the right to purchase land properties in accordance with the law.

Art. 19: no change

Art. 38: amend paragraph 1 as follows:

"Citizens have the right to participate in the administration of state and local government affairs, in All-Ukrainian and local referendums, to freely elect and to be elected to bodies of state power and bodies of local self-government.

Paragraph 2: no change.

Explanatory note:

State and local government affairs are distinct spheres of public affairs although closely interrelated. This amendment will make this article on basic rights more consistent with the chapter on local self-government and with the European Charter on Local Self-Government.

Art. 39: no change

Art. 40: no change

Art. 42: no change

Art. 47: no change

Art. 49: no change

Art. 53: no change

Art. 56: no change

Art. 69: no change

Art. 70: no change

Art. 71: no change

Art. 85: Amend as follows point 29 of article 85 on matters within the authority of the Verkhovna Rada:

" 29) establishing and abolishing regions, districts and cities of district significance, establishing and altering the boundaries of regions, districts and cities of district significance, assigning municipalities to the category of cities of district
significance, naming and renaming regions, districts and cities of district significance".

Explanatory note:

The definition of the matters within the authority of the Verkhovna Rada has to be amended in accordance with the local government reform that is contemplated and consistently with the definition of Ukraine as a unitary State by article 2 of the Constitution.

It is inconsistent with the constitutional determination of Ukraine as a unitary State to provide for a constitutional guarantee of the existence of each region, of its name and of its boundaries. As explained in section I, the list of regions should be removed from the Constitution. As a consequence, the Verhovna Rada should have the power to establish or abolish a region, to establish or alter its boundaries, to name it or rename it, as it is the case for districts.

With the territorial reform, there is no justification anymore to grant the title of city to a territorial community, while such a title has no legal or practical consequence. By contrast, we agree to keep the case of cities vested with district powers (cities of district significance), as they exist now. But, in that case, the Verkhovna Rada should have the same powers with regard to them as it has with regard to rural districts.

Art. 86: no change

Art. 92: no change

Art. 95: amend paragraph 1 as follows:

"The budgetary system of Ukraine is built on the principles of just and impartial distribution of social wealth among citizens and territorial communities"

Explanatory note:

The wording "territorial communities" in this article will not be consistent with the formulations derived from the local government reform, and is too much focused on the municipal level whereas the equalisation should not be limited to that level. Furthermore, it will be more consistent to mention the principle of equalisation in the part on local government. Alternatively, it would possible to amend the words to by deleted by the following formula: "among citizens and of equalisation among local government".

Art. 118 and art. 119: to be replaced by article 118 drafted as follows

"Art. 118.
1. The local State administration ensures in its jurisdiction:

- the execution of the Constitution and the laws of Ukraine, the acts of the President of Ukraine, the acts of the Cabinet of Ministers and of other central bodies of executive power;

- the compliance with the law and public order;

- the legality oversight upon local government acts;

- the implementation of State programmes for socio-economic, health and cultural development, for environmental protection and, in places of compact residence of indigenous peoples and national minorities, of State programmes for their national and cultural development.

2. The local State administration is organised by the law.

3. The head of the local State administration is appointed and dismissed by the President of Ukraine upon submission by the Cabinet of Ministers. He is the representative of the executive power and of all central bodies of the executive power in its jurisdiction, except courts and local offices of the procuracy and subject to exceptions provided by the law. To that extent he has authority on local bodies of the executive power on behalf of the respective central bodies of the executive power".

Explanatory note:

*Articles 118 and 119 are too much developed for constitutional articles; they include a number of provisions that should be laid down by the legislation or even by government regulations.*

Furthermore, it includes numerous provisions that are not in accordance with the Draft Concept of the reform of local self-government and of the territorial organisation of the State. If district and regional councils are entitled to form their own executive bodies, provisions on the preparation and the execution of budgets and programmes of district and regional councils have to be deleted. For the same reason, provisions on control over State administrations by councils becomes groundless.

In the proposed draft, the functional profile of local State administrations is designed more precisely and the powers of the heads of local State administrations are strengthened. Their functions are focused on State functions; they do not have any longer to manage local government tasks on behalf of district and regional councils. The heads of local State administrations will have authority, not only on the local State administration, but also on local bodies of the central executive power, e.g. of
ministries or State committees. This should improve the consistency of the implementation of national policies. Nevertheless, it might be justified to leave some branches of the executive power outside of their authority. For example, the tax administration is usually organised independently.

The new article 118 does not precise the jurisdiction of the local State administration. It will belong to the law to organise the local State administration: at the district and regional level, or only at the regional level or to determine otherwise their jurisdictions.

Since the local State administration will act only under the authority of the central government, and on their behalf it is unnecessary to detail in the Constitution that they act under control of higher central executive bodies.

**Art. 132 and 133:** to be deleted as well as the chapter on the territorial structure of Ukraine

Explanatory note:

*Article 132 is redundant with the principles stated in articles 2, 5, 7, 10 and 11 of the Constitution.*

As previously explained, *it inconsistent with the constitution of a unitary State to give a constitutional guarantee to each existing region.*

**Art. 134 to 139:** chapter X on the Autonomous Republic of Crimea: no change but chapter X becomes chapter IX since the chapter on the territorial structure of Ukraine has been deleted.

**Art. 140 to 146:** chapter XI on Local Self-Government: this chapter, now chapter X, could be redrafted as follows:

"Art. 140

The citizens of Ukraine exercise their local self-governing rights in municipalities, districts and regions through the election of local self-government bodies and their direct participation in decision-making process in conditions determined by the law. They are entitled to resolve issues of local character that are not assigned to another authority within their jurisdiction and in compliance with the law.

The organisation, powers and responsibilities of local self-government bodies are determined by the law. Executive functions are vested on elected bodies. Local self-
government bodies are empowered to issue decisions and regulations that are binding within their jurisdiction in order to fulfil their responsibilities.

The status of councillors and of holders of executive functions is determined by the law.

Particular aspects of the organisation and of the exercise of local self-government in the Cities of Kiev and Sevastopol are determined by the law.

"Art. 141

The financial basis of local self-government includes the revenues from own tax power, tax shares, budgetary transfers, revenues from tariffs and from properties and other resources authorised by the law.

The law determines the conditions, modalities and criteria of the equalisation of the revenues to the needs and the needs taken in consideration in the equalisation for each category of local self-government unit.

State tasks may be delegated in accordance with the law upon local self-government bodies under the control of the respective central bodies of the executive power or of the head of the local State administration. The expenditure needs have to be compensated by the State budget in full on the basis of expenditure standards.

"Art. 142

The head of the State administration exercises the legality control over the acts issued by local self-government bodies and on decision projects prior to their submission to a local referendum. He refers to the administrative court the acts he considers unlawful in conditions determined by the law.

In case of a serious breach of the law, the Cabinet of Ministers may dissolve a local council or revoke the head of local government unit, subject to judicial review.

"Art. 143

Self-government rights are protected by judicial procedures in conditions determined by the law".

Explanatory note:

See section I.

Constitutional provisions have to be focused on basic norms, in order not to become an obstacle to reforms. For example, it is unnecessary to put in the Constitution the
length of the mandate of local self-government bodies or to get into the definition of their responsibilities.

It is also unnecessary to restate in this chapter general constitutional provisions that have been stated earlier in the text: in particular, the constitutional norm on local elections is already in article 71.

Whereas the local government reform should be at first a territorial reform, the provisions of article 142 on cooperation based on agreements between territorial communities have to be removed, because the law could put forward the formation of integrated inter-municipal bodies as a way to the territorial reform, and a constitutional guarantee for such a low level form of inter-municipal cooperation could be used against more integrated forms of cooperation.

Any matter not regulated by the Constitution may be regulated by the law in compliance with the constitutional provisions.

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This Note on the Review of the provisions of the Constitution of Ukraine on local self-government and on the local State administration is devised to be a basis for discussion with and between Ukrainian stakeholders. It does not pretend to be a draft model.