

SECRETARIAT GENERAL

DIRECTORATE GENERAL OF DEMOCRACY
DEMOCRATIC GOVERNANCE DIRECTORATE



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 20 February 2013

CELGR/PAD 1/2013

POLICY ADVICE
ON THE STATUS OF THE CAPITAL OF UKRAINE –
THE HERO CITY KYIV

**The current document was prepared by the Council of Europe
Programme to Strengthen Local Democracy in Ukraine
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Summary

1. The current situation with regard to the city of Kyiv raises serious doubts about its consistency with European law, Council of Europe standards, Constitution of Ukraine and ordinary Ukrainian legislation.
2. Government and all other stakeholders should act as soon as possible and organise elections for the Mayor of Kyiv, as well as adopt a new, revised legislation on Kyiv and on local elections, in line with Council of Europe standards.
3. Legal advice already provided to the Ukrainian authorities remains valid. However, further advice can be provided upon request.

Introduction

This Policy Advice was prepared upon request from the Parliamentary Committee on State Building and Local Self-Government and is based on results of a Round Table held at the Ukrainian Parliament on *Current issues of the legal regulation of the status of the capital of Ukraine – Hero city Kyiv*, which took place on 13 February 2013.

The participants in the roundtable included MPs representing all major parties, including Mr Oleksandr Omelchenko, former Mayor of Kyiv (1996-2006), representatives of the Ministry of Finance, researchers, experts, NGOs, and international organisations. There was no formal representation of the Government or of the Presidential Administration.

The discussion highlighted an exceptional legal and political situation of local self-government in the city of Kyiv, which raises serious concern about the respect of the principles of the European Charter of Local Self-Government, ratified by Ukraine. Decisions should be taken as soon as possible in order to develop a new legal framework and political mechanisms which would respect the law and improve territorial management. This paper outlines several options of doing it.

I. Current Situation

The present legal and administrative situation of the city of Kyiv is exceptional under several aspects and cannot be regarded as compatible with the principles of the rule of law, democracy, and the European Charter of Local Self-Government (ECLSG).

1. The need for revision of the status of the Capital City of Kyiv

The legislation applying to the city of Kyiv is a mix of special law (mainly of 1999 with some additional amendments) and general laws on elections, budget, and taxes. Ukraine has ratified the ECLSG and is bound by its provisions. The weaknesses of the status of Kyiv with regard to the ECLSG have already been mentioned in several appraisals and reports of the Council of Europe, including the monitoring report and resolution of the Congress of Local and Regional Authorities.

The most serious issues concern the executive powers and the division between the municipal and State administrations.

The Mayor of Kyiv is elected directly by the citizens in order to exercise the executive powers in municipal affairs, in cooperation with the city council, elected separately. According to the law, as it was interpreted by the Constitutional Court (December 25, 2003, n.21-rp/2003), the President of Ukraine may appoint as Head of the State administration in the city of Kyiv *only* the elected mayor. Thus the same person exercises two completely different functions, and as the Head of State administration, the Mayor is under direct authority and control of central government.

On one hand, this may look reasonable as it avoids conflict between authorities who manage the same territory; there is a unified direction of the public apparatus; and the elected Mayor has great powers which make it clear for the citizens that she/he is in charge of the city.

However, on the other hand, this formula makes the Mayor look more like an elected officer acting under strict control of government, rather than a political leader of an autonomous local self-government unit. This ambiguity is reinforced by the fact that the status of Kyiv is very vague and includes also a region, making the Mayor also a sort of a regional governor. Finally, there is a political bias: considering the symbolic and economic importance of Kyiv, it is difficult for any government to appoint a member of the opposition as the Head of the State Administration of the City.

The Council of Europe has recommended revising these arrangements a number of times. In 2009, the Council of Europe experts welcomed a new draft law which proposed separating State and municipal administrations. The Council of Europe provided a comprehensive expertise with many recommendations, general and technical, to improve the draft.¹ It was an opportunity to modernize the local self-government in the capital city, make it more efficient and bring it into conformity with the principles of the Charter. But the project was abandoned for political reasons.

Since then, several drafts of various importance were developed. As the urgency to solve the issues around Kyiv grows every day, the Committee on State Building and Local Government organised a special discussion at the Parliament on 13 February 2013. The status of Kyiv is now back on the agenda, and at least five drafts were submitted to the Parliament.²

2. Local self-government in Kyiv

As stated by the participants in the Round Table, there is no longer local self-government in Kyiv, mainly due to an unstable political situation since 2006. Elections were held in 2006, early Mayor's and city council's elections were called by the Parliament in March 2008 but cancelled on 25 May 2008.

The result is a political turmoil and illegality of the local administration in Kyiv: there is no elected Mayor, the city council's mandate is long expired, and the State administration is ruling the City.

Since July 2012 there is no elected legitimate executive power in the City of Kyiv. No early elections have been organised. City council is no longer working under normal conditions: municipal affairs are decided and managed by staff and secretaries or directors, in a bureaucratic way, with political interferences, often illegally. The balance of powers is now inversed: under the previous law the elected Mayor was also Head of State administration, which now the Head of administration is, *de facto*, the Mayor.

This is not an acceptable situation in any local government, especially in a capital city that should be a model, both inside the country and on the international stage. If the legality of the current administration was challenged before Courts and if the latter found that the situation violates both the law and the Constitution, all acts of the current Kyiv authorities would be recognised as illegal from the beginning.

¹ Appraisal of the draft law on the Capital city of Ukraine, DPA/LEX 7/2009, 3 November 2009

² The participants in the Round Table mentioned 17, 30 and even 79 draft proposals

3. The City Council terms of office

The terms of office of the city council of Kyiv, elected in May 2008, ended in 2012 and new elections should have been organised in October 2012 at latest.

Officially no reason has been given as to the absence of new elections. Unofficial explanations link this situation to the severe defeat suffered by the presidential party in Kyiv during parliamentary elections of 28 October 2012. If so, this deadlock might last until the next presidential elections in 2015. This would hardly be acceptable and certainly not in the interest of the citizens of Kyiv. There is agreement in the Parliament today that urgent elections in 2013 are needed.

4. The District Councils (city *rayons*)

Territorial administration was also performed in Kyiv by the “district municipalities” (DM), or *rayons*, which had, as everywhere in Ukraine, an ambiguous status. They were pertinent for managing services that require proximity and were an assembly point for local citizens, as there was an elected assembly. There was uncertainty about the organ which could create and fix boundaries and competences of these entities (see Council of Europe 2009 appraisal). In 2010 the elected district assemblies were abolished by law. There are still offices and employees at that level, but their real status is unclear. They are regarded as being rather State administrations and their general direction is operated by the office of the Head of State administration, which goes against the logic and violates the principle of subsidiarity (ECLSG Art. 4 §3). These services are typically “local” and should be organised as local self-government bodies or branches of a broader local self-government entity.

The properties or services of these entities have been “privatised” following procedures whose lawfulness is doubtful and may even be criminal. Maintenance of streets and other facilities, delivering of public services are becoming poor in many areas; coordination and cooperation between the different tiers of city administration is also poor. Many experts and politicians demand that the DMs are re-established with clear status, improved powers and means.

This is not only about principles of decentralisation: it is a main concern about the efficiency of the public apparatus in a capital city. In the lasting and severe economic and social crisis, the efficiency of public administration should be a shared priority for all political leaders. Therefore there is an urgent need to establish sound local self-government ensuring good management also at the district level.

5. Kyiv financial situation

The financial situation of the city (and of all other Ukrainian municipalities) looks dramatic: there was a deficit last year; budget is run without much forecasting; investment programmes have dropped since the Euro football championship; maintenance of equipment and the budget for school meals is insufficient, etc. This is not only due to the general economic crisis but to mismanagement by the Kyiv former authorities and to the decision of the central government to reduce the financing of the capital. The Tax Code modified in 2010 provided that out of 100% of income tax collected on Kyiv’s territory, only

50% goes to local budget. The other 50% go to the State budget, without being earmarked for local governments under the equalization system.

II. A need for a political agenda

The issues outlined above are interdependent; they should be addressed together in a systemic way in order to build a democratic and efficient local administration in Kyiv, which requires strong political leadership.

Next, time is an important factor and decisions should be taken rapidly. A fundamental stake, linked directly to the roots of local self-government, is a deep dissatisfaction of the population with the management of municipal services and infrastructure in the capital, which are no longer in the hands of local political authorities or district municipalities. Everything is, *de facto*, under the responsibility of the Head of State administration of Kyiv, i.e. of the Government and the President. So the growing discontent of citizens is directly aimed against the central State power that is in charge of the City. This is probably one of the explanations of the defeat it incurred at the legislative elections of October 2012. There is little chance that the Government be capable of improving the situation in short term. However, restoring a legitimate political authority in Kyiv as soon as possible is in the interest of the Government, if it wants to avoid mass protests.

There is a wide consensus that a special parliamentary sub-committee should be mandated to work on the existing draft laws and consolidate them into one proposal. The Council of Europe's opinion should be requested and considered.

There should be a clarification of the role of different committees which deal with decentralization issues in Ukraine: Parliamentary committees, Constitutional assembly, Council of Regions, etc. There should be a common data base of information, expertise, and drafts. Coherence of the whole system and a systematic and efficient approach are essential. The status of Kyiv needs fast solutions; it should be treated exclusively in one place and the Parliament committee should secure its leadership in this matter.

The main two options are: 1) local elections should take place in Kyiv first, and the structures are modified immediately after; 2) new legislation Kyiv status and local elections is adopted first, and then the elections are organised.

Both options require a minimal consensus within political parties and between Government and opposition. Quick adoption (by June) of new legislation and elections in October seem to be the best option.

III. Status of Kyiv: issues to be addressed

1. Kyiv has a unique and special status.

This should be stated and accepted very clearly. The special status is mentioned in the Constitution and this idea is logical and generally accepted. Yet, some experts and

politicians believe that the special status should still be discussed. There is very little time to wait for conclusions of the Constitutional assembly or other bodies.

2. New electoral law should be adopted

The deficiencies of the existing law were outlined at the Round Table, and also by the 2012 Congress monitoring report (after the monitoring of local elections). The Council of Europe Programme to Strengthen Local Democracy in Ukraine provided specific recommendations on local elections in 2011 and 2012.

Generally speaking, a new law should be published long time before the elections. However, in this exceptional situation, it could be accepted that the new legislation is adopted 3 or 4 months before elections, which means adoption in June for elections in October.

3. Separation of local self-government (municipal) and State administration in Kyiv

The 2009 proposals are still on the agenda. Separation of State and municipal competences and services is a firm requirement of the Charter.

Separation of the two administrations will allow the Government and the President to still keep effective power in Kyiv on all matters that are in the competence of the Head of State administration (governor or prefect). The powers (competences) of State administration are already broad and this can be considered as a clear "specificity" for the Capital of the State.

Separation requires not only legal provisions on competences. It needs important reorganisation of services, relocation of employees and staff, new financial procedures for allocation and use of resources, etc. For these arrangements, see the 2009 Council of Europe appraisal, which provides precise and realistic recommendations.

4. A precise and rational definition of the territory of Kyiv

A new administrative map of Kyiv should be considered. This needs demographic, urban, and economic analysis. Problems may occur with the administrative entities around Kyiv that may be affected by the drawing of new boundaries. Such study should be commissioned soon, with request for an external financial and technical support.

5. Restore "district municipalities"

There seems to be consensus to restore and, in fact, to create a real local self-government at district level. There are questions about their number and limitations. The objective is to have a greater number of district councils with less population.

The whole territory of the City should have the same uniform status, as today there seem to be also some "ordinary" municipalities inside the city area. The old concept of *rayon* should be abandoned inside Kyiv in order to establish a modern, two-tier, municipal system, as in many metropolitan areas of the world.

6. What elections for Mayor?

There will be a debate on whether the Mayor should be elected directly – and then at what moment and for what duration - or by the Council. Both models exist and the Council of Europe has no specific opinion on this subject.

Whatever the solution, logically both elections – Mayor and Council - should be on the same day and for the same period. The Mayor will also try to secure a majority for his/her party in the Council, and good cooperation between the two authorities is the evident interest of good management.

7. Financial arrangements

Taxes, criteria of grants distribution for the City and district budgets have to be reconsidered.

Since the 2014 budgets cannot be changed, this could be postponed for 1/1/2015.

8. Supervision of local self-government acts and budgets

The supervision of the local self-government acts was not discussed at the Round Table. For further legislation, the observations of the 2009 appraisal are still pertinent.

One important question is about who is in charge of the legal supervision of local self-government acts. It should not be the Head of State Administration (or his office) in order to avoid frontal conflicts between two managers and two administrations that need to cooperate on a daily basis.

Therefore, the legal supervision should be performed by a special office under the Ministry of Justice or other Ministry.