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Special Adviser to the Government of Ukraine on Decentralisation

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Opinion¹
of the Special Adviser to the Government of Ukraine on Decentralisation
on the draft Law of Ukraine
“On Amendments to Certain Laws of Ukraine on rayon council functioning”

¹ This opinion reflects the views of the Special Adviser, based on Council of Europe standards and best European practice. It does not constitute an official position of the Council of Europe on the issue under consideration.

The draft Law of Ukraine “On amendments to Certain Laws of Ukraine on rayon council functioning” was submitted to the Special Adviser to the Government of Ukraine on Decentralisation by the Head of the Committee on State development, Regional policy and local self-governance.

This draft law modifies provisions of the laws “On local self-government of Ukraine” and “On local elections”. It aims at offering a solution to the situation (which has already occurred) where all municipalities in a rayon have amalgamated and there are two different representative councils on exactly same territory, a municipal and a rayonal one. In this case, the law provides for the liquidation of the rayon council, while the council of the municipal territorial community would become its successor.

1. Respect of European standards

The main standard in this case is Article 4 paragraph 6 of the European Charter of Local Self-Government which reads: “Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.”

The Explanatory report to the Charter gives more details as to the scope of this obligation: “[...] paragraph 6 is concerned both with matters coming within the scope of such authorities and with matters which are outside their scope but by which they are particularly affected. The text provides that the manner and timing of consultation should be such that the local authorities have a real possibility to exercise influence, whilst conceding that exceptional circumstances may override the consultation requirement particularly in cases of urgency. Such consultation should take place directly with the authority or authorities concerned or indirectly through the medium of their associations where several authorities are concerned.”

Obviously the law does not need to include special provisions on the consultation of the specific local and rayonal authorities concerned; such consultation would be only formal as the law already imposes the solution and the local and rayon authorities would not “have a real possibility to exercise influence”.

While this draft law would only affect a very limited number of local and rayonal authorities, it would affect them seriously enough that a prior consultation of their representative associations be needed under the Charter.

If this has not yet been done, it is recommended that all-Ukrainian local government associations, the Ukrainian Association of Rayon and Oblast Councils in particular, have the opportunity to express their views on this draft law.

2. Constitutionality of the draft law

The choice of wording in the draft law (such as “liquidation of rayon council”) may raise constitutional questions. Rayon councils are provided for in three different articles of the Constitution. The “liquidation” of a rayon council would likely be rare (there are currently 490 rayons and the envisaged number of amalgamated local communities is not less than 1500) so this would definitely not lead to the disappearance of the intermediate level of local self-government provided for in the Constitution. Whether or not the absence of separate rayon councils in a few relatively isolated cases is against the constitution is debatable (one may present the situation of cities of oblast significance as a justification against this) and only the Constitutional Court could give a definitive answer.

However, with the proper choice of wording the problem should not arise. In fact, rayon councils would not disappear; the only difference would be that the same council would exercise both local and rayonal competences. The situation where a local council also operates as the council of the next-level territorial authority is quite frequent in Europe and normally raises no specific constitutional concerns. It often concerns the capital or other very large cities.

The best known examples are the city-states of Berlin, Hamburg and Vienna. This does not mean that district (or in the cases of Berlin, Hamburg and Vienna - state) councils or parliaments do no longer exist but simply that it is the same elected council (or parliament) which performs the duties of district (or state) and local council (or parliament).

In Berlin, the city and state council/parliament is the House of Representatives (*Abgeordnetenhaus*). Berlin's executive body is the Senate (*Senat von Berlin*), consisting of the Governing Mayor (*Regierender Bürgermeister*) and up to eight senators holding ministerial positions, one of them holding the official title “Mayor” (*Bürgermeister*) as deputy to the Governing Mayor. The situation is very similar in Hamburg, where the Parliament is also a city council and the Mayor is also a minister-president while the Senate is the executive for both city and state functions. The City of Vienna is both a city and one of Austria's federal provinces (*Bundesländer*). The 100 members of the Vienna City Council are at the same time members of the Vienna Provincial Parliament, while the executive body, the Vienna City Senate consists of the Mayor and the City Councillors (total number between 100 and 15).

But the situation where a city also has a regional (or middle-level self-government) status is not relevant only for federal states like Germany or Austria. This often concerns (without necessarily being stipulated in the Constitution) capital cities in countries like the Czech Republic, Croatia, Latvia and Norway².

² Status of Capital Cities, Congress of Local and Regional Authorities, 14th Plenary Session, 4 May 2007

It is therefore recommended to slightly revise the wording to make it clear that the rayons and rayon authorities would not disappear but that the same councils would operate as both local and rayon councils.

In fact, in the case of such council fulfilling two different roles, it would be preferable to keep local and rayonal matters separate (including issues of property and budget) and to clearly indicate to which ones various decisions relate. This would make it easier to transfer back rayonal competencies to new and larger rayon councils in case of rayon amalgamation (a process which has not started yet but is provided for in the Decentralisation concept adopted on 1 April 2014).

Expediency of merging the rayon and local council

When well conducted, the amalgamation process should not decrease accessibility of public services. In fact, the opposite is true. If one-stop shops (and *starosti*) are maintained in the former merged settlements as seems to be planned in Ukraine, this can in fact increase accessibility of public services as such offices (typically located in the previous town halls) can offer citizens access not only to former, but also to new services derived from the status of “capable community”.

The same is true in case of merging local and rayonal authorities: such proximity administrative one-stop-shops could offer citizens proximity access not only to all municipal competences but also to rayonal ones, thus bringing administration closer to the population.

Co-existence on the same territory of two different elected councils, one dealing with local and the other one with rayonal issues may also lead to inefficient spending, poor separation of competences and potential conflicts between the two, as well as to confusion for the general population.

The measure of only keeping one representative council for both local and rayonal competences in case the territory of an amalgamated community corresponds with the territory of a rayon is therefore to be commended.

The only question concerning the expediency of the measure concerns the timing. Rayonal councils were elected only eight months ago so their liquidation may meet with opposition. Wouldn't it be easier if, in the few cases where rayon territory corresponds to that of the amalgamated local authority, the rayonal councils were maintained until the next local elections? In such case, during the next regular local elections only one council would be elected in the rayon to deal with both local and rayonal issues. In the same time, if a rayonal amalgamation process is to be implemented before the next local elections, such measure may

become obsolete as by mere merger the territory of the rayons could become again larger than and distinct from the territory of the amalgamated local authorities.

Conclusions

On the substance, the draft law can be supported; having only one representative council to deal with both local and rayonal issues in cases where by amalgamation a local authority has reached the same territory as the rayon can bring economies of scale, coherence and clarity in public administrative structures and work.

It is however recommended that wording should be slightly changed to make sure that there are no constitutional (and comprehension) problems; the measure does not lead to the disappearance of the rayonal authority, but simply to the fact that a single elected council will implement both local and rayonal competences on the same territory.

If this has not yet been done, it is recommended that the all-Ukrainian local government associations, the Ukrainian Association of Rayon and Oblast Councils in particular, have the opportunity to express their views on this draft law in order to respect the obligations assumed by the Ukrainian government under the European Charter on Local Self-Government.

It is also worth considering whether the advantages of having one single council before the next regular local elections compensate for the possible political costs in the territory and potential opposition to dissolving rayonal councils elected only recently or whether the measure can wait until the next regular local elections.