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**APPRAISAL
OF THE DRAFT LAW OF UKRAINE
“ON GENERAL MEETINGS (CONFERENCES)
AT PLACE OF RESIDENCE OF TERRITORIAL
COMMUNITY MEMBERS”**

The Present Appraisal was prepared by the Council of Europe’s Democratic Institutions and Governance Department of Directorate General II - Democracy, in co-operation with the Council of Europe expert Anna Gamper.

Appraisal of the Draft Law of Ukraine “On General Meetings (Conferences) at Place of Residence of Territorial Community Members”

I. Introduction

The draft law Ukraine “On General Meetings (Conferences) at Place of Residence of Territorial Community Members” was submitted to the Council of Europe Programme “Decentralisation and territorial consolidation in Ukraine” by the Committee of Verkhovna Rada of Ukraine on State development, Regional policy and Local Self-Governance..

This draft law is an important step to promote and facilitate the exercise of the right to participate through general meetings (conferences) as one of the forms of direct citizens’ participation.

The draft law, which has no constitutional status, is concerned with the legal and organisational foundations for convocation and conduct of general meetings of territorial community members at place of residence and conferences of their representatives, as well as the powers of such general meetings and conferences and the procedure for implementation of these powers.

The legal basis can be found in the Constitution of Ukraine, the Law of Ukraine on Local Self-Government in Ukraine, the Resolution of the Verkhovna Rada of Ukraine “On Approval of Regulations on General Meetings of Citizens at Place of Residence in Ukraine”. Article 69 of the Constitution reads: *“The expression of the will of the people is exercised through elections, referendum and other forms of direct democracy”*. Article 8 of the law on local self-government determines general meetings as a form of direct participations of citizens’ in the affairs of a local authority; stipulates that the local government bodies consider the decisions of general meetings in their activity; and refers to a special law on general meetings and statutes of territorial communities.

According to the explanatory note provided of there is no such special law in place and the Resolution of the Verkhovna Rada of Ukraine “On Approval of Regulations on General Meetings of Citizens at Place of Residence in Ukraine” (Contains rules on convocation, competences and organisation of general meetings, implementation of the decisions of general meetings) conflicts with the Constitution, the Law on Local Self-Government of Ukraine and the Law on Self-Organisation Bodies of Population since it had been adopted before these

laws; *“it makes impossible to exercise the right of members of a territorial community to participate in the affairs of a local authority”*.

The appraisal does not cover the question whether the draft law is in line with the national legal system. Articles that are cited without further reference are those that belong to the draft law “On General Meetings (Conferences) at Place of Residence of Territorial Community Members”.

European standards.

The European standards in this case are set out in the European Charter on Local Self-Government, the Additional Protocol to the European Charter of Local Self-Government (Ukraine declared that it should take the measures regarding the exercise of the right to participate in the affairs of a local authority, set out in Art 2 para 2 of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, in accordance with its constitutional order), Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life, the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level (Ukraine has not signed this Convention).

As regards the right to participate in the affairs of a local authority and implementing measures for the right, Article 3 of the European Charter of Local Self-Government reads:

- 1. 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.*
- 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.*

Paragraph 2 of the Article refers to assemblies of citizens, referendums or any other form of direct citizen participation. The Charter does not include any more specific principles, forms of direct citizen participation at local level.

The Additional Protocol to the European Charter on Local Self-Government on the right to participate in the affairs of a local authority supplements the Charter by setting out the right to participate in the affairs of a local authority as *“the right to seek to determine or to influence the exercise of a local authority’s powers and responsibilities”*. The Article 2 para 2a sets out the implementing measures for the right to participate: *“procedures for involving people which may include consultative processes, local referendums and petitions and, where the local authority has many inhabitants and/or covers a large geographical area, measures to involve people at a level close to them”*. The Explanatory Report to the Additional Protocol under the Article 2 para 2 emphasizes that the list of these measures is not exhaustive: *“This paragraph enumerates, non-exhaustively, measures that are to be taken as part of the effort deriving from the general obligation set out in paragraph...”* Besides, Article 1 paras 5.1-5.3 require that the formalities, conditions and restrictions to the exercise of the right to participate should be prescribed in law as well as *“formalities, conditions and restrictions necessary to ensure that ethical integrity and transparency of the exercise of local authorities’ powers and responsibilities are not jeopardised by the exercise of the right to participate”*.

Appendix II (Part B, paragraph 7, point i) of the Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life enlists measures to encourage and reinforce citizen’s participation in local public life:

“Develop, both in the most populated urban centres and in rural areas, a form of neighbourhood democracy, so as to give citizens more influence over their local environment and municipal activities in the various areas of the municipality. More specifically:

- i. *Set up, at sub-municipal level, bodies, where appropriate elected or composed of elected representatives, which could be given advisory and information functions and possibly delegated executive powers;”*

The European standards do not specify the universal forms of citizens’ participation in the affairs of a local authority, nevertheless, citizens’ meetings became a widely accepted instrument of citizen participation in various member States of the Council of Europe¹, notwithstanding the different terminology used is in the various countries for a very similar mechanism. The general meetings and conferences, as defined in the draft law *“a meeting of territorial community (microcommunity) members to consider and address local issues”* may therefore be considered such mechanism.

Other standards pertaining to the role of children, young people and foreigners in democratic participation; use of information and communication technologies for the promotion and

¹ In some Austrian Lander and in Croatia, Estonia, Greece, Hungary, Malta, Romania, Serbia, Slovenia, Spain, “the former Yugoslav Republic of Macedonia”, Turkey and Ukraine.

exercise of the right to participate; “use of wide range instruments, and the possibility of combining them and adapting the way they are used according to circumstances” are included in Rec(2001)19.

II. Detailed Analysis

A general comment must be made on the issue of legislative coherence. In most countries, the general framework for what is called in Ukraine “self-organisation of population” would appear in the basic law on local self-government; such framework could be completed by subsequent by-laws but it would leave some freedom to local authorities to adapt it to their circumstances in their own statutes. The Council of Europe has also advised on a different piece of legislation “on public self-organisation bodies”, which deals with the very same issue of facilitating citizen participation, although the specific mechanism is different. At the very least, these two pieces of legislation should be consolidated into a single one.

Another comment concerns the very size of the territory on which organisation is possible. It is commendable that the draft law opens the door to the possibility to create such form of self-organisation at micro-levels such as houses, blocks of flats and dormitories. However, in particular in large cities a multiplication of such micro forms of organisation would make interaction with local authorities very difficult and would very much limit their influence over public decisions and hence their importance.

Article 1: This Article sets out the purpose and main content of the law and clarifies that a “general meeting” refers to a meeting of territorial community members at their place of residence while a “conference” is composed of their representatives. This implies that a “general meeting” is an instrument pertaining to direct democracy, whereas a “conference” refers to representative democracy.

Article 2: This Article includes a list of legal definitions which enhances the clarity of the law and thus promotes legal certainty.

It would be useful, however, to define also “smaller constituent territories” and “territorial community” in order to delimitate them from the term “microcommunity”. Is the term

“territorial community” identical to that mentioned in Art 140 para 1 of the Constitution of Ukraine? Does the term “community” relate to a territorial entity or to a collectivity of persons?

The definition of “conference” is vague, especially because it is unclear whether “members of a respective territory” and “smaller constituent territories” refer to the microcommunity or another level of local government. It should be specified whether “conference”, in contrast to “general meeting”, just means a representative body of the microcommunity instead of the members of the microcommunity themselves (as suggested by Art 1).

The definition of “local issues” is vague inasmuch as it deals with “any other issues beyond the exclusive competence of Ukraine’s governmental authorities” and with “human activity and development of a territorial community”.

The terminology used in this draft law should be harmonised with the draft law “On Bodies of Self-Organisation of Population”.

The recommendation is to use wording “general meetings and conferences” instead of “general meetings (conferences)” in order to make it clear that different rules and procedures apply to these two instruments.

The members of a territorial community and microcommunity are defined in the article, however, the word “member” (член) is not found in the Constitution of Ukraine where the word “inhabitant / resident” (житель) is used, as well as the term “microcommunity” is new in the legislation.

Article 3: For systematic reasons, Art 3 should be amalgamated with Art 1. While there is a paragraph 1, a paragraph 2 is missing.

Articles 4-6: These provisions are clear, systematic and in line with the principles of the Council of Europe. The references in Art 5 para 1 to the European Charter of Local Self-Government and the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority are commendable. However, it would be better to distinguish between “general meetings” and “conferences” instead of adding “conferences” in brackets. For example, Art 4 para 1 stipulates that “general meetings (conferences) are a form of direct participation”, which is not technically true: only general meetings offer an instrument of direct participation, whereas conferences relate to representative democracy.

Article 7: Art 7 para 1 last sentence is unclear, due to the confusion between general meetings and conferences on the one hand and territorial communities, microcommunities and “smaller constituent territories” on the other hand. It would be much clearer if the law did not use a “bracket style approach” but included specific provisions such as “Art x ... relates also/does not relate to conferences” or “Art y ... relates also/does not relate to smaller constituent territories”.

The participation right of territorial community members who have reached the age of sixteen (with deliberative vote) follows the request in Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life to involve young people in local affairs and is to be commended.

Art 7 para 5 speaks of “initiators”. For systematic reasons, it would need a reference to Art 11 which explains this term.

Article 8:

It is unclear how a general meeting or conference could refer to an even smaller territory than a dormitory. The reference to “other smaller territories” should therefore be deleted.

Article 9: The powers of general meetings are extremely numerous. On the one hand, it is a practical-political question whether territorial community members really have the time to deal with such a large number of issues. On the other hand, most of these powers do not undermine the competences of local authorities inasmuch as they only refer to discussions, proposals or reports which are not binding to local authorities (except, however, the power under Art 9 para 1 sub-para d no 15, which allows for a unilateral refusal to carry out delegated tasks). However, some of the powers of general meetings specifically relate to public self-organisation bodies, and as far as these are concerned the author refers to the analysis of the draft law “On Self-Organisation Bodies of Population”.

Art 9 para 1 last sentence provides that a general meeting may consider and decide on such other issues within their powers as may affect the interests of territorial community (microcommunity) members. This general clause (“other issues within their powers”) is circular inasmuch as the powers are explicitly defined by Art 9. Art 9 para 3 specifies that a general meeting may not consider or resolve on any issues beyond the powers of a general meeting. In order avoid confusion, it should be clarified if the list of powers is exhaustive or not.

Art 9 para 1 sub-para c on page 7 should be changed into Art 9 para 1 sub-para b.

Article 10: The powers of the conference should be established in a more precise way.

Article 11: This Article contains detailed procedural rules on the convocation of a general meeting. This is rather unusual, when compared to other European countries² whose laws provide for local meetings, but in a much less detailed manner. Considering the enormous list of functions, it is, however, appropriate to determine the convocation procedure in such a formalistic way. Art 11 paras 10 and 11 are, moreover, in line with Art 2 para 2 sub-para iii of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority as well as Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life.

Article 13: This Article contains detailed procedural rules on the conduct of a general meeting (conference). Considering the enormous list of functions of general meetings or conferences, it is, however, appropriate to determine the conduct in a formalistic way.

Since Art 2 and Art 7 para 1 define the territorial community members entitled to participate in such meetings as persons that could include stateless persons as well, it is not clear how these persons could show a passport document in accordance with Art 13 para 1.

Article 14: The rule that the “manner of voting shall be determined by the rules of order and by attendees at a general meeting (conference)” is unclear and inconsistent.

Voting rules should be laid down in the law itself, given also the wide range of tasks of general meetings (conferences).

Art 14 para 4 refers to “own” powers of a general meeting (conference), but Art 9 does not distinguish between “own” powers and “delegated” powers. The provision that decisions which supposedly fall under “own” powers (such as the establishment of a public self-organisation body) do not require any additional approval by local governments or their officials is not consistent with Art 16 paras 1 and 3 and contravenes the draft law “On Self-Organisation Bodies of Population”, which stipulates in Art 12 that a permission to establish a public self-organisation body must be given by local authorities, unless the Constitution or certain laws would be violated.

² A number of European countries provides for (sub-)local meetings (of different types), among them, eg, Austria, Germany or Switzerland.

Article 15: It would be necessary to establish the possibility of a complaint of attendees of a general meeting (conference) in case that the minutes are incorrect.

Art 15 para 5 is in line with Art 2 para 2 iii of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority as well as Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life. Like in some other cases, one can however wonder whether a big article with 5 very explicit paragraph on the issue of the minutes of the general meetings and conferences is really necessary.

Article 16: Art 16 para 1 is extremely vague and should be contextualized with Art 14 para 4. Naturally, all decisions of a general meeting (conference) will “concern local governments” to some degree. It should be clarified under which conditions an approval is necessary. If a local government (partly or totally) disapproves, is the approval to be based on legal and/or political arguments? According to Art 16 para 3 all reasons would be possible, provided that they are “explained”. This is not consistent with Art 14 para 4 or with Art 12 of the draft law “On Self-Organisation Bodies of Population”.

Art 16 para 8 needs to be made consistent with the draft law “On Self-Organisation Bodies of Population” inasmuch as such bodies have their own decision-making organs and as the references must be restricted to decisions concerning these bodies. It is not clear what “recommended for all territorial community members” means.

Article 17: The range of appellants is not clear, e.g., whether this includes all kinds of enterprises, institutions or organisations, based on the same territory or not. Exact rules on those appeals are missing, e.g., what the grounds must be, if there are any time limits etc. When a court allows the appeal (assumedly, for legal reasons only), may it annul the decision taken by the general meeting (conference) and refer the matter back to the general meeting (conference) or replace it by its own decision, at its discretion?

Article 18: It is to be supposed that the requirement to “consider” decisions does not necessarily mean that they must be approved (see above).

The sanctions provided by Art 18 seek to ensure that local government officials keep in line with the law which contributes to the integrity standards expressed in Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens

in local public life and in the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

Chapter V para 2. It is recommended that Article 8 is harmonised with the wording suggested: “general meetings and conferences” instead of “general meetings (conferences)”.

III. Overall Analysis

In general, the proposed draft law “On General Meetings (Conferences) at Place of Residence of Territorial Community Members” is a very comprehensive piece of legislation and meets the European standards in this field. However, it is recommended to revise the draft law in order to address several issues, both with regards to form and content.

The text of this draft law is extremely technical and detailed. It could be argued that simplifying this law in order to only include the general principles of organisation of meetings and conferences and leave all details to territorial statutes would be a better option. In any case, it is highly recommended that this draft law be integrated into the law on bodies of self-organisation in order to ensure legislative coherence and to avoid duplications.

As regards form, some provisions are placed in an unsystematic way, i.e. in the wrong sections, even though they address the same or similar issues. Some legal definitions that would be useful are missing, while other terms are defined ambiguously. Provisions should distinguish more clearly if, how and to what extent they just refer to general meetings or to conferences or both of them. In the absence of full integration (which would be the preferable solution) there should be more references and compatibility clauses between this draft law and the draft law “On Self-Organisation Bodies of Population”.

As regards content, the main intention of the draft law, namely the development of the legal framework of general meetings or conferences at sub-local level, is in line with the European Charter of Local Self-Government, the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (in particular, Art 1 para 4.1, Art 1 para 4.2, Art 2 para 2 ii a and Art 2 para 2 iii) as well as Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life, not only with regard to the direct involvement of citizens in general meetings or conferences, but also, more specifically, with regard to the involvement of

foreigners, young people and the transparent publication of information relevant to general meetings.

The draft law should also take into account that the size of territorial communities is very different ranging from cities with millions of population to communities with less than 100 inhabitants. The rules and procedures should apply effectively both in large city and small village communities as well as in different regions of Ukraine. This is also a good argument to possibly reduce the level of detail of this law and leave more room for adapting the operation of meetings and conferences to the local circumstances.

It is commendable that the draft law mentions both the European Charter of Local Self-Government and the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority as part of its legal basis. It is surely desirable to involve residents of a territorial (sub-)community as closely as possible and to give them the chance to express their wishes on the development of local issues. Seen against a comparative European standard, it is nevertheless extraordinary to segregate local communities at the level such small units. Despite the intended strengthening of direct democracy, this bears several considerable risks with regard to the “operation of an effective political democracy” (Art 1 para 5.3 of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority):

First, the number of powers of general meetings (conferences) is enormous so that it is questionable whether, in practice, residents will be able and willing to cope with these issues. As the rules on convocation and conduct of meetings are very detailed and formalistic – which, in itself, is appropriate just because of the great responsibility with which they are entrusted –, there may emerge a trend to avoid general meetings and rather establish conferences, which, however, is an instrument of representative and not of direct democracy. Second, rules on the election of conference delegates as well as on the requirement to establish conferences are relatively scattered and incomplete.

Third, the draft law does not sufficiently specify in which case the general meeting or conference may decide on issues in a binding way or not, and what its “own” powers are. Fourth, the right to appeal to courts needs much more specification.

Fifth, when contrasted to the draft law “On Self-Organisation Bodies of Population”, the complex functional relationship and need of co-existence of a general meeting or, what is more, conference on the one hand and the public self-organisation body on the other hand are questionable.

The European Charter of Local-Self Government does not explicitly deal with sub-local forms of direct or representative democracy, although it provides in its Art 3 para 2 that the right of local self-government 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 shall, however, in no way affect recourse to assemblies of citizens, referendums or any other form of citizen participation where it is permitted by statute. There is no doubt that the draft law would be such a statute and that the proposed general meetings constitute such assemblies of citizens, even though they are limited to certain parts of the local territory.

As regards powers, the European Charter of Local Self-Government focuses on the scope of local powers vis-à-vis national or regional powers, while it does not say anything on the question of an intra-local distribution of competences. If domestic legislation provides for sub-local entities and vests them with competences because they are “closest to the citizen” (Art 4 para 3 of the European Charter of Local Self-Government), it must, however, also legitimize them through democratic elections, accountability and supervision.

As regards the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, the draft law implements some of its provisions, such as the possibility for residents (not just Ukrainian citizens)³ to vote in general meetings or to be elected as conference delegates. Above all, it relates to Art 2 para 2 ii a of the Additional Protocol to the European Charter of Local Self-Government which mentions “procedures for involving people which may include consultative processes, local referendums and petitions and, where the local authority has many inhabitants and/or covers a large geographical area, measures to involve people at a level close to them”. General meetings or conferences may be seen as a measure to involve people at a level closest to them, although the draft law does not restrict them to large geographical areas, but allows for extremely small sub-local units. Even though the law-maker’s intention to provide for citizen-closeness and subsidiarity is commendable, the concrete problems arising from this draft law, also with regard to the European Charter of Local Self-Government, cannot be resolved just by reference to Art 2 para 2 ii a of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

³ Even though the Ukraine has not ratified the Convention on the Participation of Foreigners in Public Life at Local Level.

IV. Recommendations

In general, the draft law is in line with the European standards, however, a number of recommendations are made in this appraisal in order to improve the draft law. Detailed recommendations follow from part II of this appraisal. More generally, it is recommended:

- to improve terminology, in particular with regard to the definitions of “general meetings”, “conferences” and local issues; harmonise the terminology with the draft law “On Bodies of Self-Organisation of Population” and other legislation;
- to make the law more coherent and systematic, in particular with regard to the provisions of the draft law “On Self-Organisation Bodies of Population”;
- to clarify and extend some of the legal definitions as well as on the distinction between “own” and “delegated” powers of general meetings;
- to simplify the procedures and rules as regards to convocation and organisation of general meetings and conferences.
- to clarify the requirements for a conference and the precise ambit of its powers;
- to introduce secret ballot with regard to the election of conference delegates;
- to reassess, in the light of the purposes of direct democracy at local level (such as citizen-closeness and straightforward procedures), the complicated relationship between general meetings and conferences on the one hand and public self-organisation bodies on the other hand;
- to make the provisions on the requirement of approval by local government more consistent;
- to improve the provisions on the right to appeal to courts.