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Opinion on the draft law "On the Kyiv City – the Capital of Ukraine"

(#2143-3)

The present Overview was prepared by the Centre of Expertise for Good Governance, Democratic Governance Department of Directorate General II – Democracy

1. Introduction

1. The present opinion was prepared in response to the request by the Chair of the Parliamentary Committee on State Building, Local Governance, Regional and Urban Development of Ukraine. It was prepared for the Council of Europe by DGII – Centre of Expertise on Good Governance based on contributions from a local and an international expert of the Centre of Expertise (Markyian DACYSHYN and Robert HERTZOG respectively) and an expert of the Congress of Local and Regional Authorities (Francesco PALERMO).

2. The European Charter of Local Self-Government (henceforth "the Charter") was ratified by Ukraine on 6 November 1996 without declarations or reservations and it entered into force in respect of Ukraine on 11 September, 1997. It can therefore be assessed that all obligations of the Charter apply in respect of all levels of Ukrainian sub-national self-government.

3. The opinion will be examining the compliance of the current text with the European Charter on Local Self-Government, with the Recommendations of the Committee of Ministers of the Council of Europe and with the best practice of other European countries. Without making a constitutional analysis, the opinion will also point at some of the articles of the Constitution of Ukraine which may need to be examined closer in order to ensure that the final text is in line with it.

2. General remarks

4. The present draft is supposed to replace the current Law on the Capital of Ukraine – the Hero City Kyiv (1999). The Council of Europe has suggested on numerous occasions to revise this law, in particular in order to eliminate what it considers as a violation of the Charter and of the principle of local self-government itself, i.e. the dual nature of the institution of the Kyiv Mayor, who is directly elected but also appointed as Head of the Kyiv City State Administration.

5. In the last ten years, the Council of Europe, through its Centre of Expertise, produced different documents referring to the situation of the City of Kyiv:

- In 2009, a detailed appraisal on a draft law on the same topic; that draft was finally not adopted (DPA/LEX 7/2009);
- In 2013, a policy advice document, arguing for a reform of the legal status of the Kyiv City (CELGR/PAD1/2013);
- In 2019, a Peer Review report "Democratic governance in metropolitan areas, focusing on Kyiv Region", looking at and making recommendations concerning the governance of the metropolitan area of Kyiv (including surrounding municipalities);
- In 2019, opinions on the draft laws on the same topic submitted to the Ukrainian Parliament (CEGG/LEX(2019)4 and CEGG/LEX(2019)5).

6. The Congress of Local and Regional Authorities of the Council of Europe also prepared an Analysis Report on the Draft Law of Ukraine "On the Capital City of Ukraine – hero City Kyiv" on 23 February 2020.

7. The major changes introduced by the current draft law (separating the executive bodies of the Kyiv City and the Kyiv City State Administration; creating semi-autonomous and directly

elected urban district (raion) councils; and introducing a mechanism of supervision of legality) are to be welcomed, as explained in Opinions CEGG/LEX(2019)4 and CEGG/LEX(2019)5.

8. The draft law under consideration (one out of four alternative drafts) was adopted by the Parliament of Ukraine in the first reading on 3 October 2019.

9. During November-December 2019, experts' and stakeholders' consultations were held at the Parliamentary Committee on State Building, Local Governance, Regional and Urban Development of Ukraine, followed by a round of public presentations for the City residents. However, the dynamic of the process subsequently slowed down. Only in July 2020 the Parliamentary Committee cleared the updated version of the draft law for the second reading. Since that time the Parliament has not considered the draft law, although a number of session meetings were held. Since the local elections campaign was officially launched on 5 September 2020 (50 days prior to the election date), elections to the Kyiv City LSG bodies will be based on the current Law on the Kyiv City with no elections to the urban district council. The delay in the adoption of the draft Law will also substantially postpone its entering into force, which is scheduled in the draft law 'on the day following the assumption of powers by the Kyiv City Mayor and the Kyiv City councillors, elected at the next local elections'.

3. Timing of the reform and the transition period

10. As stated in the Opinion CEGG/LEX(2019)4, the reform sequence does matter. A coherent reform should start from the supreme law (Constitution), continue with the general law (Law on Local Self-Government, on Administrative Supervision and others) and only subsequently with the special law (in this case the Law on the Capital City, Kyiv). In Ukraine however, all these three important legal instruments are being discussed at the same time, which raises the danger of a lack of coherence and hence legal inconsistency.

11. It is therefore crucial to draft the update of a special law having a clear vision of the overall legal framework and the transition period schedule.

12. The draft law under consideration provides for complicated arrangements for the transitional period. The draft law (with some exceptions) will come into force on the day following the assumption of powers by the Kyiv City Mayor and the Kyiv City councillors, elected at the next local elections (25 October 2020). The current Law "On the Capital of Ukraine - Hero City Kyiv" (1999) will be in force until the draft law comes into force. It is also very likely that the draft law will not be adopted before the next local elections.

13. Meanwhile, the draft law requests to the Kyiv City Council within 20 days from the Law coming into force to rename (and transform) the Kyiv City State Administration into 'Kyiv Magistrate', which will become the Kyiv City Council's executive body. At the same time the draft remains silent regarding the establishment of the new Kyiv City State Administration.

14. Introduction of the urban district elected councils is not likely to happen soon. Considering that the procedure requires 90 days for a regular local election campaign there is no chance to have Kyiv City raion councils elections on 25 October 2020, when local elections throughout Ukraine will be held.

15. Getting out of the deadlock in the urban planning is a challenge for the transition period, as reaching the agreement on territorial boundaries and Urban Master Plan of the City with neighbouring LSGs is likely not possible. Therefore an *ad hoc* procedure with the engagement

of the Cabinet of Ministries is provided by the draft Law, however its implementation is questionable under the current legal framework.

4. Major changes introduced by the draft Law

16. As already mentioned in Opinion CEGG/LEX(2019)5, the draft law introduces three major changes to the current system, each of them being in principle very welcome.

a. Separating the executive bodies of the Kyiv City and the Kyiv City State Administration

17. The Council of Europe is strongly in favour of this measure, which would bring the law in line with Art. 3.2 of the European Charter on Local Self-Government, as explained in Opinion CEGG/LEX(2019)4.

18. This may be the most important initiative in the current law. Cumulating executive functions on behalf of the central government and on behalf of the local population in the City of Kyiv (just like at the level of raions and oblasts) has often been criticised and extensively covered in previous documents of the Council of Europe as being inefficient, anti-democratic and against the Charter.

19. Putting an end to a situation which is inherited from a previous epoque and represents both a confusion of functions and a conflict of interest is to be particularly welcomed. However, relations between the City and the State should be carefully considered in order to provide the declared outcomes and secure the autonomy of the City authorities.

20. The new functions of Head of State Administration at the level of Kyiv will make this institution very similar to the one of the Prefect prefigurated in Draft Law of Ukraine "On Amendments of the Constitution of Ukraine" (#2598). The Council of Europe (Centre of Expertise, after the consultation of the Venice Commission and the Congress of Local and Regional Authorities) produced Preliminary Comments on this draft law (CEGG(2020)2). This document presents in detail the Council of Europe position on this institution (paragraphs 24-28); these considerations will not be reproduced in the current document.

b. Creating directly elected urban district (raion) councils

21. As mentioned in Opinion CEGG/LEX(2019)4, the creation of urban districts with directly elected councils in capital cities (but often also in other large cities) is a very current European practice. It can bring administration closer to citizens, reinforcing democracy and possibly having also positive governance effects by making local government more flexible, more accessible, more responsive and more accountable.

22. It needs to be noted that there is nothing in the Charter which may create obligations to the Ukrainian authorities in this respect. From the point of view of Ukraine's international obligations, the Ukrainian authorities can choose any model of raion (or indeed none whatsoever) that they may see fit.

23. However, as stressed in Opinion CEGG/LEX(2019)5, these districts should not amount to a new autonomous level of local government, splitting Kyiv further and making co-ordination on general planning, urban and development policies even more difficult. A balance between the competences of the City and of the urban districts should be found and a mechanism to

resolve disputes and ensure a healthy amount of coordination on major urban issues should exist.

c. Introducing a mechanism of administrative supervision over local authorities' acts

24. As already mentioned in Opinion CEGG/LEX(2019)4, unlike any other member State of the Council of Europe, Ukraine has currently no mechanism to ensure legality supervision of local acts. This legal and institutional hiatus is due to the fact that the role of the Prokuratura in this respect was abolished in the Constitutional amendments on justice on 2 June 2016, but the Constitutional amendments on decentralisation, which were supposed to transfer this competence to the newly create Prefect institution, were not adopted.

25. The opinion of the Council of Europe on the mechanism of administrative supervision is presented extensively in the above-mentioned Preliminary Comments on the draft constitutional reform (CEGG(2020)2, paragraphs 29-36).

26. The Charter introduces three obligations as to this mechanism, i.e. legality (exercised only in case and by procedures provided specifically by law), functional autonomy (supervision over own competences should normally concern only legality, while for delegated competences it can also concern expediency) and proportionality (intervention to be kept in proportion to the interests which it protects).

27. The Council of Europe (Centre of Expertise) conducted in 2018 a "Strasbourg format" meeting (confidential moderated negotiation among all stakeholders) on the principles of the establishment of a supervision system in Ukraine and obtained interesting results. It proposed the creation of a system which would be efficient but very respectful of local self-government; such system could function autonomously but could also be easily transferred to the Prefects if such institution is created. The consensus found on this occasion would have made the supervision of legality over local authorities' action and inaction one of the "lighter" and most protective of local autonomy in Europe.

28. Establishing such mechanism at the level of the Kyiv City (even if this is only for delegated competences for the moment) is an interesting development. As a general rule, during the discussions held in Strasbourg format it was widely considered that Heads of State Administration, who already have an excessively powerful role as executives of both state and oblast (or raion) administration, should not be in charge of such supervision. However, the Kyiv City State Administration could be an exception, as its new role would be, after the separation between its Head and the Mayor operated by the draft law under review, completely reviewed and closer to that of a Prefecture. Some limitations need however be set to such mechanism in order to avoid any abuse of power.

5. Constitutional implications

29. This opinion has neither the ambition nor the authority to conduct an analysis of the draft law in the light of the Constitution of Ukraine as this is the role of the Ukrainian Constitutional Court. In the Council of Europe, it is the European Commission for Democracy through Law (the "Venice Commission") which is more authoritative on constitutional matters, although the Venice Commission is not examining the compliance of national laws with national constitutions either.

30. A list of the constitutional provisions which may affect the current draft law, and which should be examined carefully when discussing the law in detail is however presented below:

- Constitution of Ukraine provides that only ***peculiar aspects*** of exercising of the executive power (Article 118) and local self-government (Article 140) in Kyiv are to be established by a law; meanwhile the draft Law has ambition to establish *legal foundations* for the City;
- The legal status of an urban district territorial community is uncertain in the draft Law, considering the Article 140 of the Constitution provides that 'Local self-government is the right of **a territorial community** — residents of a ***village*** or a voluntary association of residents of several villages into one ***village community***, residents of a ***settlement***, and of a ***city*** — to independently resolve issues of local character within the limits of the Constitution and the laws of Ukraine;
- Article 144 of the Constitution states that ***all*** (not only within delegated powers) ***decisions*** of LSG bodies, in case of their inconsistency with the Constitution or the laws of Ukraine shall be suspended in the manner prescribed by a law ***with a simultaneous appeal to the court***.

6. Analysis of the draft law articles

Section I – General provisions (Art. 1-11)

31. The first section is quite detailed as far as certain underlying principles of the city governance are concerned and makes this part much longer as compared to the current legislation. While no standard exists as to the degree of detail, this represents a positive development in two ways. On the one hand, it introduces important principles for modern governance that were not developed when the law from 1999 was adopted, such as environmental criteria, sustainable urban planning, accessibility or digitalisation. On the other, it lays down principles and rules that might be taken for granted as the baseline for a functioning urban society (such as safety, cohesiveness, transparency for architectural competitions, protection of vulnerable groups, gender equality, participation), but are nevertheless very important in the context of the city of Kyiv and of Ukraine more generally, indicating that all actors are expected to strive for the achievement of such goals. In this perspective, the list of such principles has an important integrative effect, even if some of them are already contained in the current legislation.

32. Art. 1 clarifies that the law is to be considered as *lex specialis*, thus derogating from the general provisions laid down in the two more important laws regulating municipalities in Ukraine, the law "on Local Self-Government in Ukraine" and the law "on Local State Administration". The reference to the Constitution is appropriate, as the special status of the city of Kyiv is mandated by the Constitution itself, while the reference to international treaties could be made clearer: as there is no international treaty on the status of Kyiv, most likely the reference is to international treaties on local self-government. Therefore, reference could be made to the Charter rather than to international treaties in general, or at least to international treaties and other norms on local self-government.

33. Article 4 re-introduces the urban districts (raions) of the city, without indicating their number. This is in principle a welcome measure. In fact, since 2010 the districts only operate as bodies of the state administration, which is problematic in terms of respect of the principle

of local democracy laid down in the Charter. This development will bring the situation in Kyiv more in line with established practice in European countries, where it is common for big cities and especially capitals to resort to districts as parts of the city administration, in order to make the administration more effective and to bring it closer to the citizens.

34. It is also positive that the draft law establishes that "a decision to form, name, transform, liquidate, establish and change the boundaries of the urban districts in the city of Kyiv shall be adopted by the Kyiv City Council" (as established by the Constitutional Court back in 2001), and that Art. 4 §4. lays down the underlying criteria that should inform such changes. This is somehow complemented by Art. 12 §5, which stipulates that "the extent and scope of the powers held by the Kyiv urban district councils shall be determined by the Kyiv City Council" and reinforced (or duplicated) by Art. 30 §1, according to which "a Kyiv urban district council shall be established and liquidated by [a] resolution of the Kyiv City Council" (the necessity of such repetition could be double-checked). However, as provided for by the Constitution, districts are administrative units, and for this reason any changes in the district division of the city can be made by the Verkhovna Rada ("upon submission of the Cabinet of Minister of Ukraine according to the proposal from the Kyiv City Council", Art. 4 §3). A clearer delimitation between the powers of the Verkhovna Rada regarding the boundaries of the City of Kyiv (Art. 4 §3) and the powers of the Kyiv City Council regarding the urban districts (Art. 4 §4.) would be helpful and could avoid future disagreements.

35. The relation between local authorities of the larger Kyiv metropolitan area are difficult. Procedures for the draft urban planning documents, covering sub-urban zone or territories of common interests of neighbouring communities, suggested by the draft law (§ 2-3 of Art.8) are not likely to deliver a solution to the controversial situations, which are frequent in the Kyiv City metropolitan area. There is no provision in case neighbouring communities cannot/ are not willing to reach an agreement on urban planning documents.

36. One might consider the suggestion, discussed during the above mentioned Council of Europe Peer review, that in case of disagreement lasting a certain period of time, the issue may be submitted to the Cabinet of Ministers of Ukraine for consultation and final decision. Such a proposal might be helpful to unblock urban planning in the metropolitan area; however, a procedure has to be settled in detail in the draft law and in relevant general laws (On Regulation of Urban Planning and On Cabinet of Ministers of Ukraine).

Section II - Local Self-Governance in the City of Kyiv (Articles 12-34)

37. The draft law re-enforces and clarifies the separation between the City (represented by the Mayor) and the Head of the State administration in the City: the former should be tasked with implementing a political strategy, the organisation of the work of the City Council, the implementation of the municipal decisions, while the latter should carry out functions related to the execution of tasks deriving from State decisions and the implementation of State programmes. To date, the elected Mayor also performs the functions of the Head of State Administration, and to return to a separation of the two functions is a welcome development, which might resolve a number of issues deriving from the cumulation of functions, including some constitutional litigation.

38. Art. 12 is labelled "Exercise of local self-government in the city of Kyiv", reflecting the terminology of the Constitution. At the same time, it goes quite far in determining its

organisation, and not only the exercise of the local self-government. As already pointed out in the assessment of the previous draft law by the Congress, also this draft might cross the constitutional border (Article 140 of the Constitution) between organization of local self-government (which is a prerogative of the State) and the specific aspects of its exercise (which is a local power) for the city of Kyiv,

39. This Section in fact introduces a detailed regulation of the role and powers of the respective bodies. It goes as far as to include in the law some roles that, while very important in the city governance – such as the Deputy Mayor for Finances (Art. 26) and the Chief Architect Art. 28) –, normally belong to the scope of self-organization of local governments. The degree of details in this Section may add to legal certainty but it limits quite drastically the scope of action for the Mayor and the City Council.

40. Art. 12 adds to clarity in providing the list of the bodies in charge of local self-governance in the City of Kyiv as well as the forms of direct citizens participation in addressing local issues. Meanwhile, the urban district community is not mentioned as a component of the City local self-governance, which raises the question of its status. It is positive that Art. 12 §5 clarifies that the powers of the urban district are determined by the Kyiv City Council.

41. Ukraine has a peculiar system (shared only by some other former Soviet countries and by most of the UK) where the legal persona is not the local community but the authority. However, it looks excessive to make **all** local authorities and administrations (Kyiv City Council, Kyiv Magistrate, Kyiv urban district council and executive offices of the Kyiv city urban districts) as **independent** legal entities (Art. 12 §3). The Magistrate and executive offices of the urban districts are not really "authorities" but mere administrations implementing decisions taken by Councils. Whether or not district councils need to be separate authorities or are subdivisions/antennae or the City Council is very debateable. Making them independent legal personae will not help with the coherence of urban policies.

42. Art. (13 and) 14 specify in great detail the powers of the Kyiv City Mayor. The draft law abandons the current approach which gives the Mayor of Kyiv the powers of all other mayors and only additional powers are specified. However, despite the long list of 34 tasks, the powers and functions of the Mayor are limited to a managerial-executive or to a representative role, except for the appointment and dismissal of the Deputy Mayor, the Chief Architect and, above all, the heads of structural subdivisions of the Kyiv Magistrate (the executive) (Art. 14 §2 #14). This provision seems to promote a sort of "spoils system" whereas the political winners give functions in the administration to political friends rather than a merit-based system. The Mayor is also vested with a suspensive veto power on the decisions of the City Council, which can be overruled by a 2/3 majority of the Council (Art. 22 §4).

43. Articles 15-24 regulate in great detail the functions, the bodies and the work of the Kyiv City Council. Art. 24 prescribes transparency requirements and restrictions to the City councillors, which are not provided by other legal acts and do not apply to the members of other local councils in Ukraine. While rules on avoiding conflicts of interest (such as Art. 24 §3 and Art. 24 §4) on accountability and on granting transparency, including on reimbursements and compensations (Art. 24 §6) are certainly welcome, such requirements make the status of councillor in Kyiv rather different from that in all other local governments in the country.

44. Furthermore, it is rather unusual in comparative practice that the head of the assembly's support administration is elected, as stipulated by art. 16 of the draft law (Secretary of the Kyiv City Council). Such procedure can give the Secretary a very special position and make

him/her very powerful in relation to the Mayor. This is a general observation rather than one specific to the current draft as, according to the current legislation (Law on local self-government), the Secretary is already elected by the council from among its members and, in case where the Mayor cannot exercise his/her function, the Secretary will replace him/her.

45. Contrary to current legislation and practice, the Mayor loses his/her right to vote in the City Council but has the right of vetoing the decisions of the Council, the veto being overruled by the Council with a supermajority of 2/3. This undoubtedly reinforced the Mayor's position within the Council.

46. However, the objective right of the Head of the Kyiv City State Administration to take part and speak at all City Council meetings is unusual; while not per se against the Charter, it does give him/her a very privileged position.

47. Art. 25 establishes the Kyiv Magistrate as the executive body of the Kyiv City Council which, according to Art. 14 §2 #11, is "managed" by the City Mayor. It is not specified what "management" means in this context, in particular whether the expression includes the appointment and dismissal of the Chief Executive, nor what kind of accountability is prescribed. Further elaboration and clarification would help.

48. The same Art. 25 introduces, in its §5, the idea of a contract-based model for all employees of the Kyiv Magistrate. This not only contradicts the Law On Service at Local Self-Government bodies, which provides limited possibilities for contracting local self-government officers (Art.10), such as in cases of temporarily absence (e.g. maternity leave), but it is also at odds with the practice of most European countries. A 100% contractual staff is very vulnerable to politicisation and nepotism. It is also necessary, during transitions of power following elections, to have a degree of institutional memory and administrative continuity which can only be ensured if fundamental structural staff is status-based.

49. Art. 33 and 34 lay down relevant and pervasive rules in order to ensure transparency and openness in the administration and by the local government's authorities, introducing an electronic office (Art. 33) and a system of monitoring and audit (Art. 34). From the point of view of drafting, Art. 33 §8 of the draft law, on the inventory of the property belonging to the Kyiv City Territorial Community, could be placed as a separate article or under the functions of the Magistrate.

50. In sum, while detailed and well structured, the section on the local self-government in the City of Kyiv designs a relatively weak self-government, whose bodies have primarily the task to manage the administration, with a relatively limited role as to key decisions for the city. By contrast, the section on the State executive power (Kyiv City State Administration and its Head) is far shorter and less detailed but confers to these bodies a wide range of significant powers.

Section III – Specificities of the exercise of the executive power (Art. 35-37)

51. Art. 35 shortly prescribes that there cannot be any State urban district administrations (Art. 35 §3), this way concentrating the state executive power as opposed to the local self-governance which is divided among several authorities (City Council, Mayor and urban districts in particular). Above all, it stipulates that the Kyiv City State Administration cannot be headed by the Mayor (Art. 35 §2), thus explicitly overcoming the current situation.

52. Art. 36 establishes the list of attributions of the Kyiv City State Administration. §2 of this article stipulates that all its powers listed in the current Law "On Local State Administration" will be transferred to the Kyiv Magistrate (it is understood, as delegated, not own competences), with the exception of a list of competences which are to be withheld by the State Administration under the current law. In principle, this transfer of competences is a very welcome development, although some caveats are detailed further down.

53. The State Administration remains however a very powerful actor in the City, in particular because of the "open clause" (#8 of §3), "take any other measures as may be required to perform the tasks assigned to the Kyiv City State Administration". This is not against the Charter or a danger to local government per se insofar as such new tasks that may be assigned in the future to the Kyiv City State Administration do not limit the autonomy of the Kyiv City Council and Mayor.

54. Another potential danger may arise from the #2 of §3, which stipulates "apply to and receive from the competent authorities, institutions and organisations of all patterns of ownership the information required for the exercise of his powers". Such power has been abused in some countries; the need of local authorities to report to the central government representative may become extremely time consuming or even an instrument to harass them. It is therefore of essence to understand "required" as "strictly necessary". Part of this stipulation is duplicated in Art 37 §5, which limits however to a certain extent this obligation ("to the extent defined by law").

55. Art. 37 establishes the administrative supervision procedure. The first and most important observation is that this procedure applies only to delegated competences of the Kyiv City Council and Mayor. It is understood (Art. 15 §2) that the competences listed in the general law on local self-government are **own**, while those transferred from the State Administration under Art. 36 §2 will be considered as **delegated**. This should however be made clear, as a different interpretation could be that the execution of decisions taken in the exercise of general local government competences, as such execution is transferred from the State Administration to the Kyiv Magistrate, would remain a delegated task over which the State Administration retains supervision of expediency; this would be both inefficient and against the Charter. If the first interpretation is correct, this would entail that a significant part of the activity of the local authorities will remain exempt of legality supervision. This is also the case with the other local and regional authorities in Ukraine.

56. There is nothing in the Charter obliging central authorities to establish a mechanism of administrative supervision, but Ukraine is the European country where such mechanism does not exist. At the same time, it is preferable that the administrative supervision over own competences be solved for all local and regional authorities in the revised Constitution and basic law on local self-government. The situation of Kyiv is only exceptional insofar as the draft law provides for the transfer of a significant number of competences currently belonging to the State Administration, as delegated competences to the City authorities (although a similar solution could be applied in the future to the oblasts).

57. Despite the fact that supervision of legality over the exercise of own competences does not exist, some limitations should be established by law as to the supervision over delegated tasks; otherwise the above-mentioned decentralisation would become meaningless and there is a risk that the City Magistrate would become a mere executant of decisions of the Kyiv City

State Administration and in fact an agency with double subordination, both to the City authorities and to the State Administration.

58. In any case, it is an obligation under the Charter (Art. 11), and it should be clearly stipulated that all acts issued by the Head of the Kyiv City State Administration (including precepts) affecting local authorities can be appealed in Court in case they are considered to be against the law.

59. Moreover, it should be made clear that, as the Charter required under Art. 4 §5, through the delegation of these competences, local authorities are given discretion to adapt their exercise to local conditions and needs.

60. The principle of "proportionality" should also be specifically mentioned, as such principle applies also for delegated competences. One of its main corollaries is that supervision is not ex ante, is not systematic and of the same depth for each and every act (or absence thereof) of local authorities. On the contrary, the frequency, depth and results of the supervision of each type of act should be "kept in proportion to the importance of the interests which it is intended to protect" (Art. 8 §3 of the Charter), i.e. to the importance and irreversibility of the impact which they may have on the life of citizens.

Section IV - Strategic planning in the City of Kyiv, strategic urban development documents and city information system (Art. 38-40)

61. The draft law (Art.38) introduces a list of 8 areas of the City strategic planning (residential housing, social infrastructure, public spaces, technical infrastructure, residents' mobility and public transport, heritage, natural spaces, innovations and education). Such a level of detail seems excessive and limits substantially the freedom of the City Council to develop its own strategic planning arrangements.

62. It is very questionable whether there is a need for the law to make detailed provisions on several issues, which could be better left at the discretion of the City Council (e.g. as a part of the City Charter). Namely they are:

- nominations of 'Honorary citizen of the Kyiv City', 'Ambassador of the Kyiv City' etc. (art.11);
- procedure of initiation of changes to the City Charter (art.9);
- three mandatory deputies of the Kyiv Mayor: a) deputy in charge of finance, b) deputy in charge of the Kyiv city Magistrate management and c) deputy of Kyiv mayor - Chief architect of the City (art.13); To be recalled that Article 6 of the European Charter of Local Self-Government provides that local governments should be able to determine their own administrative structures, taking into account local needs and the need to ensure effective governance.
- Municipal E-Government IT system (Art. 40);
- establishment in every urban district a Town Hall as a One-Stop-Shop of public services and district authority's office (Art. 42).

Section V – City as a service (Art. 41-42)

63. The status of the City Halls mentioned under Art. 42 is not clear. They seem to be, on the one hand, service delivery "one-stop-shops" and as such a possible duplication of the already existing Administrative Service Centres (around 1,000 of which have already been created throughout Ukraine) and, on the other, headquarters for the urban raion authorities. In any case, the need to specify in the law their existence is not at all obvious. It is unclear why this level of detail provided by the law as to these Town Halls is at all necessary, in particular as Art. 42 §1 starts with "Town Hall **may** be established in each urban district…". Does this mean that without this provision they may **not** be established?

Section VI - Final and Transitional Provisions

64. Several inconsistencies seem to persist in the final and transitional provisions of the draft law. Only one of them will be mentioned, which is the transformation of the Kyiv City State Administration into the Kyiv Magistrate within 20 days from this law's coming into force. Kyiv Magistrate is a new type of authority and, as per Art. 25 §5, its staff shall be employed on a contractual basis. Current State Administration are neither contractual employees nor local officers, but (central) public servants; their status is ruled by the Law on civil service, not by the similar law ruling local government officers. Therefore, a comprehensive reorganisation procedure might be needed, and it would clearly take more than 20 days.

Conclusions and Recommendations

65. The draft law "On the City of Kyiv – Capital of Ukraine" is the most recent of a series of legislative proposals aiming at resolving the lasting problems of the governance in the capital city. Successive drafts have increased the degree of detail in regulating key aspects for the strategic planning, the modern management, the inclusive organization of a complex metropole, and this draft is commendable as far as these parts are concerned.

66. As to the governance and the division of powers, the draft law continues the trend common to previous proposals and separates, in a clearer way, the functions and the authorities of the local self-government and of the executive power. In particular, the functions and roles of the Mayor on the one hand and of the Head of the Kyiv City State Administration on the other are divided up to the explicit prohibition for the Mayor to head the City State Administration. This is also a very positive development.

67. It is also commendable that the law transfers a substantial proportion of the competences which currently belong to the Kyiv City State Administration to the City authorities; even though these competences will become not own but delegated local ones, this evolution is de facto a decentralization and is to be commended.

68. The situation of the administrative supervision over own competences of the Kyiv City local authorities is not solved and it probably does not need to be specifically solved for Kyiv, but a general solution should be found during the future revision of the Constitution and of the basic law on local self-government.

69. However, some of the reformist provisions of the draft Law need to be revisited in order to achieve declared goals. Based on the above analysis and with the aim of ensuring that the

draft law will be in line with the Charter, other Council of Europe standards and with established European practice, the following main recommendations should be considered:

a. Make it legally clear that the execution by the City Magistrate of decisions taken in the exercise of own competences given by law to City authorities is not subject to supervision of expediency by the Head of the Kyiv City State Administration.

b. Make it legally clear that the delegation of competences should allow City authorities "discretion in adapting their exercise to local conditions" (Art. 4 §5 of the Charter).

c. Clearly stipulate the principle of proportionality as a criterion for the exercise of the supervisory power of the Head of the City State Administration over competences which are delegated by this law to City authorities (Art. 8 §3 of the Charter).

d. Stipulate that all acts issued by the Head of the Kyiv City State Administration (including precepts) affecting local authorities can be appealed in Court.

e. Eliminate provisions which are too detailed and excessively limit the powers of the City authorities, as mentioned in this opinion, including those on internal bodies of the municipal council, Deputy Mayors and City Architect, Town Halls; re-consider provisions, which complicate general regulations, namely on inter-municipal cooperation (procedure of an IMC agreement approval and signature), urban planning (frequency of the Urban Plan amendments), etc.

f. Eliminate the right of the Head of the Kyiv City State Administration to take part in and speak at Kyiv City Council meetings.

g. Provide effective solutions to eliminate the deadlock of urban planning in the larger Kyiv metropolitan area and legal grounds for creating specific forms of inter-municipal cooperation (the report of the Council of Europe peer review could help in this respect).

h. Special attention should be paid to the timing of the reform and transition period for implementation of new government arrangements both at the City level, its urban districts and at city state administration.