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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**COMPILATION**  
**OF VENICE COMMISSION OPINIONS**  
**CONCERNING CONSTITUTIONAL AND LEGAL PROVISIONS**  
**FOR THE PROTECTION OF LOCAL SELF-GOVERNMENT<sup>1</sup>**

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<sup>1</sup> *This document will be updated regularly. This version covers opinions and reports/studies adopted up to and including the Venice Commission's 104<sup>th</sup> Plenary Session (23-24 October 2015)*

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## Introduction

This document is a compilation of extracts taken from opinions adopted by the Venice Commission on issues concerning constitutional and legal provisions for the protection of local self-government. The aim of this compilation is to give an overview of the Venice Commission findings and recommendations in this field. The present document does not cover issues related to the states' structure, unitary/federal states, nor special decentralised or local forms of government, such as territorial autonomy.

The compilation is intended to serve as a source of reference for drafters of constitutions and legislation, researchers, as well as for the Venice Commission's members, who are requested to prepare opinions and reports on local self-government. When referring to elements contained in this compilation, please cite the original document but not the compilation as such.

The compilation is structured in a thematic manner in order to facilitate access to the general lines adopted by the Venice Commission on various issues in this area. It should not, however, prevent members of the Venice Commission from introducing new points of view or diverge from earlier ones, if there is a good reason for doing so. The compilation should be considered as merely a frame of reference.

The reader should also be aware that most of the documents from which extracts are cited in the compilation relate to individual countries and take into account the specific situation there. The quotations will therefore not necessarily be applicable in other countries. This is not to say that recommendations contained therein cannot be of relevance for other systems as well.

Each quotation in the compilation has a reference that sets out its position in the opinion or report/study (paragraph number, page number for older opinions), which allows the reader to find it in the opinion or report/study from which it was taken. In order to gain a full understanding of the Commission's position on a particular issue, it would be important to read the complete chapter in the Compilation on the relevant theme you are interested in. Most of further references and footnotes are omitted in the text of quotations; only the essential part of the relevant paragraph is reproduced.

The compilation is not a static document and will be regularly updated with extracts of recently adopted opinions by the Venice Commission. The Secretariat will be grateful for suggestions on how to improve this compilation ([venice@coe.int](mailto:venice@coe.int)).

## I. Constitutional guarantees for local self-government

### A. The principle of local self-government (decentralisation)

“1. The draft amendments introduce a new “administrative-territorial” structure for Ukraine, based no longer on “the combination of centralisation and decentralisation” as provided by the constitution in force, but on “decentralisation in the exercise of state power”. The new principles of “ubiquity and capability of self-government authorities” and of “sustainable development of administrative-territorial units” are introduced in Article 132. This represents the basis for a sound decentralisation system in Ukraine in line with the European Charter of Local Self-government and is to be welcomed [...].”

*CDL-AD(2015)028, Opinion on the Amendments to the Constitution of Ukraine regarding the Territorial Structure and Local Administration as proposed by the Working Group of the Constitutional Commission in June 2015*

“23. Article 13 which places an obligation on the state to support decentralisation is to be welcomed.”

“192. Chapter VII lays down the foundations for the recognition and protection of local self-government, which is a positive step.

193. Article 128 sets out the principle of the decentralisation of local government. Decentralisation “within the framework of the unity of the state” is a commitment of the state (Article 13). The Constitution does not explicitly guarantee “local self-government”, which 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.<sup>9</sup> Nonetheless, the legislator will be bound by the principles contained in this chapter, in particular through the designation of local authorities to which powers will be delegated and the principle of administrative independence (Article 129); the principle of local self-government is therefore implicitly guaranteed, which is to be welcomed.”

*CDL-AD(2013)032, Opinion on the Final Draft Constitution of the Republic of Tunisia*

“13. [...] the Constitution should cover not only the arrangements of the organization of the central powers of the State and the rights and freedoms of the citizens, but also the existence and the functioning of the local self-government institutions, which display an essential role in spreading freedom and democracy in the society through their intermediate position between the State and the citizens.”

“18. [...] under Article 4.1 of the ECLSG (European Charter of Local Self-Government), the basic powers and responsibilities of local government “shall be prescribed by constitution or by statute”. This means that the ECLSG does not in itself require that the constitution contain detailed or specific provisions on local self-government, some flexibility may be practical as well as appropriate in some cases.”

“48. [...] While the extent and form of self-government are left by international standards, notably the European Charter on Local Self-government, to the discretion of States, certain principles are essential: that public responsibilities should be exercised, by preference, by those authorities which are the closest to the citizens; that delegation of competences should be accompanied by allocation of sufficient resources; and that administrative supervision of local authorities’ activities should be limited.”

“50. The Venice Commission is nevertheless of the opinion that the level of constitutional entrenchment which would be brought about by these amendments is insufficient. Certain

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important matters would need to be regulated at the level constitution, failing which the above mentioned fundamental principles of local self-government will lack sufficient protection and the Constitutional Court will not dispose of a sufficiently clear yardstick to decide on conflicts of attribution of competences and other controversies between the state and local self-government representatives.”

*CDL-AD(2010)008, Opinion on the Draft Constitutional Law on changes and amendments to the Constitution of Georgia (Chapter VII - Local Self-Government)*

“11. Art. 8 of the draft law includes new provisions on local self-government. It is particularly welcome that throughout the draft again uses the term of local self-government, as opposed to the Shapoval draft which used local government. However, the meaning and legal significance of the new provision in Art. 8(3) (*“The State provides adherence to the Constitution of Ukraine and laws during exercising local self-government”*) remains unclear. The same goes for Art. 8(4) (*“The rights of local self-government are protected by the court”*).”

“108. According to this provision, local self-government is *“the right and ability of the community residents to regulate and manage the public affairs of local significance in the interests of local residents within the limits envisaged by the Constitution of Ukraine and laws”*. The comparison of this definition with the one in Article 2 of the European Charter of Local Self-Government (ECLSG) shows that the draft could be improved. The definition refers to “residents” but not to the elected local authorities, which will normally exercise the local self-government rights and it does not guarantee explicitly that a “substantial share” of public affairs will be regulated and managed by the local communities and their bodies.”

“109. A further issue is that [...] the communities which are entitled to local self-government rights are those of the *“cities, towns, villages or associations of several settlements”*. This is problematic as *rayon* and *oblast* communities are not recognised as such, although local self-government bodies are elected also at these upper territorial levels.”

“111. While it is commended that some basic principles are clearly stated in the draft, the scope and the large amount of detail (namely on electoral arrangements, competencies and organisational issues) may create problems. Therefore, the recommendation is to review and simplify Article 156 (as well as Articles 157 and 159) which are too detailed. Art 76 is sufficient for the right to vote and to be elected. There is no need to mention in the Constitution the terms of office for the local government bodies.”

***CDL-AD(2009)024, Opinion on the Draft Law of Ukraine amending the Constitution presented by the President of Ukraine***

“2. As a general point, Article 146 does not explicitly entrench, either in its present or in the amended proposed form, such guarantees for local self-government which would clearly meet the standards established by the Charter. It barely sets out the principle that “municipalities are independent to exercise their power” (proposed new para. 1), but fails to entrench a number of other equally important principles laid down in the Charter.

3. More specifically, the proposed amendment to Article 146 (1) does not seem sufficient to ensure that local self-governments will be able to regulate and manage a “substantial share of public affairs” under their own responsibility and that their powers shall be “full and exclusive”, as provided for by Article 4 paras 1 and 4 of the Charter.”

*CDL-AD(2009)010, Opinion on the Draft Amendments to the Constitution of the Republic of Azerbaijan*

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“4. [...] Now the proposed Amendment would substitute a new Art 101. It purports to create a “right to local self-government” for citizens. Such a right for individuals is not a right which the European Charter of Local Self-Government seeks to guarantee although there is a reference to citizen participation in the Charter’s preamble and Art 3 acknowledges the possibility of such “direct citizen participation”. The focus of the Charter is instead on the autonomy of organs of local self-government. There is, however, a practice in some countries of seeking to create both forms of “right” (for both institutions and individuals) to run in parallel and this is not, in itself, a disadvantage. Two observations should be made: (1) Although the “citizen” terminology may suit present purposes, it may soon turn out to be too narrow. Rules of the European Union require voting rights at local level to extend beyond citizens of the member state to citizens of other EU countries. (2) It is important that any right to local self-government for individuals should never be capable of being construed as undermining the autonomy of local authorities guaranteed by the Charter. The right exercisable “directly” must not displace the right exercisable through the elected authorities. All will depend, in practice, on the more detailed legal provisions made and these must be Charter-compliant.”

CDL-AD(2008)016, *Opinion on the Draft Amendments to the Constitution of Republika Srpska*

“41. [...] According to the proposed amendment in Art. 1 § 4, bodies of local self-administration would be added to the provision regulating the ways in which popular sovereignty is exercised. [...] However, the constitutional guarantees for local self-administration remain rather weak. Thus, no general principle that local administration would be based on self-government is stated in Chapter Seven of the Constitution. [...] Considering the absence of a general principle of local self-government, Article 76 seems to imply that the starting-point in the organization of local administration would not be self-government but administration through state organs.

CDL-AD(2002)033, *Opinion on the Draft Amendments to the Constitution of Kyrgyzstan*

42. The Commission further notes that, according to the amended Constitution, the President would also have powers which endanger the principle of local self-government. Thus, the President could suspend or annul not only acts of the Government and other executive bodies, but also acts of bodies of local self-administration (Art. 46 § 4. 4). [...] This power covers only cases provided for by the law, but the Constitution does not in any way limit the powers of the legislature to regulate the reasons for dissolution.”

CDL-AD(2002)033, *Opinion on the Draft Amendments to the Constitution of Kyrgyzstan*

“A further positive change is that Article 5, para. 2, now states that “the people exercise power directly and through bodies of state power *and bodies of local self-government*”.

“Chapter xi. Local self-government [...] The Constitution properly distinguishes between the original competence of local self-government and powers assigned to it. Article 7 of the Transitional Provisions provides for the transfer of powers to elected chairmen responsible before the respective councils.

Since many details are not settled by the Constitution itself, future development will largely depend on legislation.”

CDL-INF(1997)002, *Opinion on the Constitution of Ukraine*

“18. The Commission welcomes the new drafting of Article 11.2: “*The Republic of Armenia shall recognize and guarantee the local self-governance as an independent democratic system of public self-governance*”, a principle enshrined in the European Charter of Local Self-Government.”

*CDL-INF(2001)017, Report of the Venice Commission on the Revised Constitution of the Republic of Armenia*

“[...] Similarly, several other provisions of the Charter are closely followed in the amended Articles, such as those governing the organisation of local self-government bodies, the absence of all supervision except with respect to constitutionality and legality where local self-government bodies are exercising their independent (non-delegated) powers, and provisions governing finances.[...]”

*CDL-INF(2001)015-e, Opinion on the Amendments of 9 November 2000 and 28 March 2001 to the Constitution of Croatia;*

see also

*CDL-INF(1996)002, Opinion on the regulatory concept of the Constitution of the Republic of Hungary / Avis sur les principes directeurs de la nouvelle Constitution de la République de Hongrie, item 12*

## **B. The principle of subsidiarity**

“5. The draft amendments introduce a new “administrative-territorial” structure for Ukraine, based no longer on “the combination of centralisation and decentralisation” as provided by the constitution in force, but on “decentralisation in the exercise of state power”. [...] This represents the basis for a sound decentralisation system in Ukraine in line with the European Charter of Local Self-government and is to be welcomed. The principle of subsidiarity, which is enshrined in Article 143, could be mentioned in this provision too.”

“6. Paragraph 1 item 7 of Article 143 sets forth the crucial principle of subsidiarity stipulated by the European Charter of Local Self-government, which is to be welcomed. Paragraph 3 however erroneously applies it to self-government *bodies* instead of to self-government *units*. This should be rectified.”

*CDL-AD(2015)028, Opinion on the Amendments to the Constitution of Ukraine regarding the Territorial Structure and Local Administration as proposed by the Working Group of the Constitutional Commission in June 2015*

“7. Article 140 par. 6, in line with the European Charter of Local Self-Government, introduces the principle of subsidiarity. It is for the law to determine the actual tasks to be performed at each territorial level.

8. Article 143 par. 1 provides that “*local self-government bodies and their executives resolve the issues of local self-governance ascribed to their competence by law*”. This provision will have to be interpreted in the light of the principle of subsidiarity set forth in Article 140, i.e. of the principle of the general competence clause. It would be appropriate to reformulate it in terms of attribution of competences to the lower levels for all matters not specifically reserved by law to the upper levels. It would also be appropriate to set forth the principle that upper local self-government authorities do not supervise lower self-government authorities.”

*CDL-AD(2014)037, Opinion on the Draft law amending the Constitution of Ukraine, submitted by the President of Ukraine on 2 July 2014*

“180. The amended article 120 (1) draws on the current article 120, which sets out the principles of decentralization, local autonomy and decentralization of public services. It adds that decentralization should be implemented according to the principle of subsidiarity and that the transfer of competence must be accompanied by corresponding financial resources. This proposal is a welcome addition.”

*CDL-AD(2014)010, Opinion on the Draft Law on the Review of the Constitution of Romania*

“197. Article 131 provides for a division of powers on the basis of the principle of subsidiarity, but it no longer contains (compared to previous versions of the draft Constitution), the principle of delegation “by means of blocks of powers”, which is regrettable because this would make for a more structured and coherent approach. The fact that local authorities shall have regulatory authority and that their regulatory decisions shall be published is to be welcomed.”

*CDL-AD(2013)032, Opinion on the Final Draft Constitution of the Republic of Tunisia*

“86. It seems that the regions have as their main task to enforce the policy of the central state *vis à vis* the municipalities (Article 143(3)) and do not enjoy any regional autonomy, which would allow them to pursue specific regional interests. The “regional policy” referred to in Article 142 would thus in fact be a central policy on regions rather than a policy developed by the regions themselves. While such a strongly centralised approach remains a possible option, it should be noted that in Europe there is a tendency to provide for autonomy also on the regional level in line with the principle of subsidiarity.”

*CDL-AD(2008)009, Opinion on the Constitution of Bulgaria*

“7[...] The introduction into the Constitution of the principle of subsidiarity as one of the bases of the functioning of the public administration may lend itself to reinforcing local autonomy and to protecting it; it strengthens the constitutional framework for Romania’s accession to the European Union, because the European Union has long supported the application of that principle in all countries.

According to the principle of subsidiarity, each level of organisation must receive as many powers as it is capable of exercising satisfactorily. If the principle of subsidiarity is taken in its full sense, it requires not only the “deconcentration” of the central State but also a certain autonomy for the decentralised structures, or at least certain guarantees for decentralisation. [...] The question also arises as to the means, in particular the financial means, which subsidiarity presumes. What exactly does subsidiarity mean, in this context? Is it anything other than a rhetorical formula?

In the absence of a definition of such a principle that is acceptable to everyone, moreover, it is more than desirable that the respective powers of the various authorities should be determined by an institutional statute; otherwise there is a danger of increasing the number of conflicts of powers rather than ensuring greater clarity.”

*CDL-AD(2003)004, Opinion on the Draft Revision of the Constitution of Romania (Unfinished texts by the Committee for the revision of the Constitution)*

“[...] These provisions closely follow those of the European Charter of Local Self-Government with respect to the principle of subsidiarity. [...]”

*CDL-INF(2001)015, Opinion on the Amendments of 9 November 2000 and 28 March 2001 to the Constitution of Croatia*

### **C. Adequacy between powers and financial resources**

#### **1. The principle of state financial support for local self-government**

“9. Article 142 sets forth in detail the material and financial bases for the local self-government. It appropriately provides for the duty of the state to ensure the adequacy of the financial resources of the local self-government units as well as to provide financial means



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for additional tasks. This is in line with the European Charter of Local Self-government and is to be welcomed.”

*CDL-AD(2015)028, Opinion on the Amendments to the Constitution of Ukraine regarding the Territorial Structure and Local Administration as proposed by the Working Group of the Constitutional Commission in June 2015*

“10. [...] Financial support by the State, however, is indisputably a necessity, and indeed Article 142 mentions as sources of material and financial basis for local self-government “a part of national taxes”, presumably in view of the equalization of resources. The principle of financial support by the State for local self-government, therefore, should be given constitutional entrenchment.”

*CDL-AD(2014)037, Opinion on the Draft law amending the Constitution of Ukraine, submitted by the President of Ukraine on 2 July 2014*

“198. Article 132 regulates the financing of local authorities. It lays down the general rules, whereby “these resources shall be consistent with the powers granted to them by law.” This is to be welcomed. The last paragraph of this provision adds that “the financial arrangements governing local authorities shall be specified by law”. Nevertheless it would be advisable to set out the main lines of approach. In addition to the financial regime, the transfer itself will also need to be specified by law.”

*CDL-AD(2013)032, Opinion on the Final Draft Constitution of the Republic of Tunisia*

“39. It might be appropriate to foresee the allocation of resources also should new competences be added to the list of existing ones.”

*CDL-AD(2010)008, Opinion on the Draft Constitutional Law on changes and amendments to the Constitution of Georgia (Chapter VII - Local Self-Government)*

“11. This amendment is designed to capture the essence of Art 9 of the Charter. It greatly expands on the existing Art 103 of the Constitution and is, therefore, greatly to be welcomed. The text could, however, be further improved by (1) giving priority (as the Charter does) to the availability of financial resources sufficient for the discharge of local authority competences; (2) entitling units of local self-government freely to dispose of *all* those resources - not just those deriving from their “own incomes” as in the present text of the Amendment; and (3) securing that part at least of their total funds do indeed derive from “own income” i.e. local taxes and charges whose rate they can determine.”

*CDL-AD(2008)016, Opinion on the Draft Amendments to the Constitution of Republika Srpska*

“[...] Similarly, several other provisions of the Charter are closely followed in the amended Articles, such as those governing the organisation of local self-government bodies, the absence of all supervision except with respect to constitutionality and legality where local self-government bodies are exercising their independent (non-delegated) powers, and provisions governing finances. This development is to be welcomed, although two further observations must be made: first, the resources necessary to exercise these powers must be transferred to the appropriate levels, and second, a new law on local self-government must be adopted in line with the new constitutional scheme.[...]”

*CDL-INF(2001)015, Opinion on the Amendments of 9 November 2000 and 28 March 2001 to the Constitution of Croatia*

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## 2. The principle of financial autonomy

“60. It is unclear under Article 184 paragraph 3 and Article 185 paragraph 1 if the local authorities are free to determine the local taxes or if they are bound by their determination by the national law.”

*CDL-AD(2015)038 Second Opinion on the Draft Amendments to the Constitution (in particular to Chapters 8, 9, 11 to 16) of the Republic of Armenia*

“12. New Article 142 removes the role of the central government in the process of formation of the revenues of the budget of the local authorities, thus strengthening the financial independence of local self-government. This provision is welcome.”

*CDL-AD(2014)037, Opinion on the Draft law amending the Constitution of Ukraine, submitted by the President of Ukraine on 2 July 2014*

“13. The Constitution does not include any explicit guarantees for the financial autonomy of the municipalities. Art 188.4 only lists the sources of revenue but does not, for instance, establish a right to taxation or state subsidies.”

*CDL-AD(2007)004, Opinion on the Constitution of Serbia*

## II. Scope of local self-government. Powers of local authorities

### A. Own powers / delegated powers

“59. Article 181 paragraph 1 divides the functions and powers of communities in three groups: own mandatory functions, own optional functions and powers delegated by the state. The distinction between mandatory own functions and powers delegated by the state is unclear and its justification is questionable. As regards state oversight (Article 187), the need for more extensive than merely legal oversight even in the tasks now called mandatory own functions could be warranted. “

*CDL-AD(2015)038, Second Opinion on the Draft Amendments to the Constitution (in particular to Chapters 8, 9, 11 to 16) of the Republic of Armenia*

“14. The last paragraph of Article 143 requires reformulation: subordination to the executive state authorities is only justified in case of delegation of competences, which is provided in the previous paragraph, and only relates to such delegated competences. This provision should therefore read: “in cases of delegation of certain competences by the executive state authorities, the local self-government bodies shall be subordinated to the delegating authorities”.”

***CDL-AD(2015)028, Opinion on the Amendments to the Constitution of Ukraine regarding the Territorial Structure and Local Administration as proposed by the Working Group of the Constitutional Commission in June 2015***

“30. The Venice Commission recalls that an essential feature of the regulation of the local government is the identification of the basic functions (“own” competences, as opposed to “delegated” competences<sup>1</sup>) of its institutions [...].

31. One solution would consist in spelling out at the constitutional level the “own competences” of local self-government units. This would prevent governments from taking away powers from local governments if they do not dispose of a qualified majority.

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32. Another possible improvement may consist in providing in the Constitution that “the basic principles of the competences of local self-government are determined by organic law“. [...] As a consequence, the Constitutional Court would declare unconstitutional any ordinary law dealing with local self-government which does not respect the principles stated in this field by the relevant organic law.”

*CDL-AD(2010)008, Opinion on the Draft Constitutional Law on changes and amendments to the Constitution of Georgia (Chapter VII - Local Self-Government)*

“117. State powers would be exercised locally by state authorities, while all local self-government powers would be exercised by local self-government bodies, except in the case when specific state duties are delegated to local self-government bodies and exercised on behalf of the state. This provision should stimulate the development of local self-government at all levels. It is also stipulated that the costs of delegated functions should be covered by budget transfers or by the transfer of resources or properties. However, this provision does not guarantee that the amount of resources allocated will cover the costs of the delegated functions. Therefore, the recommendation is to modify the provision and provide explicitly for full compensation of the financial burden resulting from delegation, thus avoiding the risk that state tasks are delegated mainly to alleviate the pressure on the state budget.”

***CDL-AD(2009)024, Opinion on the Draft Law of Ukraine amending the Constitution presented by the President of Ukraine***

“36. “Delegation” may take two different forms. First, it may consist in the transfer of powers which are given to bodies of local self-government (mainly the Mayor or the holder of the executive power) in order to perform tasks or issue acts which are still considered to be state tasks. [...].

37. Second, “delegation” may mean permanent transfer of a State power or activity to local government in order to become a full “own power” of local government (for instance, transfer of policing or water distribution, cultural or sports infrastructures, social housing, etc). It is an extension of decentralisation and local self-government powers. To avoid this transfer being purely nominal, it is necessary for appropriate resources to be given to local governments so that they can implement it effectively, especially when this competence had been previously performed by the State. It concerns not only equity, but also sensible public management.

38. Whatever “delegation” means, in both cases financial compensation is needed. However, it will not be calculated using exactly the same methods. In any case, it must be clearly understood by all that the Constitution means either form of “delegation” or both.

39. It might be appropriate to foresee the allocation of resources also should new competences be added to the list of existing ones.”

*CDL-AD(2010)008, Opinion on the Draft Constitutional Law on changes and amendments to the Constitution of Georgia (Chapter VII - Local Self-Government)*

“65. The Commission further suggest to delete the part of the proposed paragraph 3 of Article 88.1 of the Constitution which reads that the Mayor of Yerevan “shall pursue the territorial policy of the Government”. The Mayor of Yerevan should undertake only those responsibilities which are attributed to him/her in accordance with a new Law on the City of Yerevan. He or she must therefore not be responsible for the territorial policy of the Government, unless some functions are delegated to the City of Yerevan in accordance with a law on the City of Yerevan. Nothing should be incorporated in the amendments to the Constitution which would diminish the independence of local self-government.”

*CDL-AD(2004)044, Interim Opinion on Constitutional Reforms in the Republic of Armenia*

**B. De-concentrated / decentralized powers**

“15. [...] In the new system, executive state administration functions and local self-government will be clearly separated. State administrations at the regional and district self-government level will be removed and replaced by the prefects and the territorial units of central executive bodies. Community, regional and district councils will elect independently their own executive bodies, chaired by their president, and accountable to them. This shift towards local self-governance deserves to be commended.”

“16. Item 4 of Article 119 should be reformulated so as to explicitly limit the prefect’s power “to “co-ordinate and organise the activity of territorial units of central executive bodies and local self-government bodies” to cases of emergency and martial law, as such power may not be a general one with respect to local self-government bodies.”

**CDL-AD(2015)028, *Opinion on the Amendments to the Constitution of Ukraine regarding the Territorial Structure and Local Administration as proposed by the Working Group of the Constitutional Commission in June 2015***

“63. At the same time, Articles 89, 91 and 92 of the Constitution speak of “local public administrations”. These appear to be local arms of the central state, responsible for fulfilling the delegated responsibilities of the central government in villages and cities on behalf of the central government. The “heads of executive local self-government bodies” referred to in Article 112(2), on the other hand, are local executive bodies fulfilling the responsibilities of the local authorities (devolved functions).

64. Under Article 89 par 7 of the Constitution, the Prime Minister, upon proposals of local *keneshes* in accordance with the relevant legislation, shall appoint and dismiss “heads of local public administrations”. The proposed revisions to Article 89 par 7 remove the requirement of the prior proposal of such appointments and dismissals by the local *keneshes*, and thus their involvement in such appointments/dismissals *per se*.

65. This would mean that, rather than moving to increased local autonomy, the draft Amendments attempt to assert central control over certain matters that fall under subnational control in other jurisdictions. However, the proposed amendment to Article 89 would be acceptable if coupled with adequate mechanisms to avoid conflicts between local self-governments and the delegated administration of the central state at local levels.”

“68. [...] it would be expedient for the law drafters, when amending these provisions of the Constitution, to incorporate mechanisms that would enhance transparency, and reduce the potential for conflict between delegated state administration operating in local communities, and local self-governance bodies. The current draft Amendments do not contain such safeguards, and would need to be revised in order to be clearer, and more coherent. “

**CDL-AD(2015)014, *Joint Opinion on the draft law "on introduction of changes and amendments to the Constitution" of the Kyrgyz Republic***

“107. The draft brings a very important change by introducing a clear separation between local self-government and state administrations at the regional and local level (as has been the case in France since 1982). However, as mentioned before, provisions on “State Power”, i.e. deconcentrated state executive bodies and their relationship with local self-government authorities appear in Section IX. The recommendation is to present the provisions on local self-government and those on State executive bodies operating at territorial level (and their administrations) in two separate chapters, to avoid the confusion of two very different kind of public authorities.”

**CDL-AD(2009)024, *Opinion on the Draft Law of Ukraine amending the Constitution presented by the President of Ukraine***

“7[...]“Deconcentration” is quite different from decentralisation. “Deconcentration” depends on the existence of territorial districts in which the State is present in the form of its services, whereas decentralisation relies on the presence of territorial communities whose organs are elected and exercise certain powers on their own behalf [...]”

*CDL-AD(2003)004, Opinion on the Draft Revision of the Constitution of Romania (Unfinished texts by the Committee for the revision of the Constitution)*

**III. Election versus appointment of local self-government bodies**

“57. Article 180 paragraph 1 should specify that community councils are directly elected.”

“195. With regard to the direct elections of the first two (municipal and district councils), some words have to be said about the type of electoral system that will be applied: the draft text is silent on this point. By electoral system, we mean here first-past-the-post or proportional representation, and within the proportional representation system (if that is the one that is chosen), the applicable mathematical method: there are in fact several proportional representation systems (the D'Hondt system, the Imperiali system, the Sainte-Laguë system, and many others).

196. We believe that it would be helpful to settle these major questions directly in the Constitution and not leave them to a particular law. These are certainly not questions of detail, and experience has shown that if these questions are not settled in the Constitution itself, they are likely to engender - precisely because they are set out only in norms of legislative level - a permanent temptation for the majority in place to change them as they see fit [...]”

*CDL-AD(2013)032, Opinion on the Final Draft Constitution of the Republic of Tunisia*

“37. The changes made in Chapter 7 on Local self-government meet the recommendations made by the Commission in its previous opinions. Thus, the principle that Yerevan is a community, hence a local self-government unit, is expressly stated. The new Article 108 affirms the principle that the Yerevan Mayor must be elected, though the law may provide for an *indirect election*, which is legitimate under the European Charter on Local Self-Government. Detailed provisions on the formation of the local self-government bodies and their functioning in the City of Yerevan will be specified by law. Should an indirect election of the Mayor *by the Council of Aldermen* be already envisaged as the solution, it would be appropriate to state it in Article 108.”

*CDL-AD(2005)025, Final Opinion on Constitutional Reform in the Republic of Armenia*

“17. With regard to the appointment and dismissal of the Mayor of Yerevan (proposed Article 88.1, § 2), the Commission recalls its report of 2001, stating that the power of the President to appoint and dismiss the Mayor of Yerevan is not only in breach of essential principles of local democracy and the European Charter of Local Self-Government, but also contradicts with Article 3 of the Armenian Constitution currently in force, which provides for direct suffrage for the election of local self-administration structures. The strong recommendation, expressed in the report, to delete this provision is therefore to be repeated.”

*CDL-AD(2004)044, Interim Opinion on Constitutional Reforms in the Republic of Armenia*

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58. “[...] However, the proposal to re-introduce the provision according to which the Mayor of Yerevan is appointed and dismissed by the President of the Republic (which was deleted in a previous draft) is in breach of essential principles of local democracy and in obvious contradiction with the European Charter of Local Self-Government. The Commission strongly recommends that this provision be deleted. The Commission further notes that according to the proposed provision the Mayor of Yerevan “*shall conduct the territorial policy of the Government*”. The Commission recalls that the Mayor should be the elected head of local self-government unit of Yerevan. Performing at the same time the duties of an elected head of a local self-government and of a representative of the central authority may prove quite delicate. This cannot however justify a loss of the necessary independence of the local self-government (see also below, Chapter 7).”

*CDL-INF(2001)017, Report of the Venice Commission on the Revised Constitution of the Republic of Armenia*

#### **IV. Accountability. Supervision of local self-government bodies**

##### **A. Supervisory authority**

“58. Article 180 paragraph 3 lays down that “the community mayor shall be accountable before the council”. It remains unclear how this accountability is supposed to be realised. Does it for instance include the council’s right to dismiss the mayor?”

*CDL-AD(2015)038, Second Opinion on the Draft Amendments to the Constitution (in particular to Chapters 8, 9, 11 to 16) of the Republic of Armenia*

“18. The deletion of paragraph 5 of Article 121 and the ensuing removal of the competence of the Public Prosecutor’s Office to supervise compliance by local self-government bodies with the law and constitutional principles is to be strongly welcomed. This is an urgent change in order to provide the new law on the Prosecution Service with a solid constitutional foundation.”

*CDL-AD(2015)028, Opinion on the Amendments to the Constitution of Ukraine regarding the Territorial Structure and Local Administration as proposed by the Working Group of the Constitutional Commission in June 2015*

“9. The Venice Commission raised several serious concerns about this Article. In its view, the aim of a reporting obligation should be to ensure that proper and accurate information is given to citizens to enhance democratic control and, in order to accomplish this goal, the procedure should be targeted to the delivery of an improved report, not to a pre-term dissolution of the concerned municipality [...]”

*CDL-AD(2014)022, Joint Opinion of the Venice Commission and the Directorate of Democratic Governance of the Directorate General of Democracy of the Council of Europe on the revised draft law making amendment to the law “on the status of municipalities” of the Republic of Azerbaijan*

“22. In municipalities where the Mayor is directly elected, responsibility ending in dismissal procedures would be very questionable. It is indeed difficult to justify that the Municipal Council could dismiss the Mayor, who possesses his/her own democratic mandate, independent of the Council.

23. In addition, the Venice Commission wishes to draw the attention of the Georgian Constitutional Commission to the risks of political instability which would be caused by a solution consisting in the direct election of both the Municipal Council and the Mayor, with the possibility for the former to dismiss the latter.”

*CDL-AD(2010)008, Opinion on the Draft Constitutional Law on changes and amendments to the Constitution of Georgia (Chapter VII - Local Self-Government)*

“47. In addition, this provision fails both to address the structure of such supervision and to identify the authority actually performing the supervision. In particular, it would be necessary to distinguish between administrative and judicial supervision, also with regard to the effects on the acts of the local government and the accountability and responsibility (political, civil, criminal and administrative) of the local administrators. “

*CDL-AD(2010)008, Opinion on the Draft Constitutional Law on changes and amendments to the Constitution of Georgia (Chapter VII - Local Self-Government)*

“19. As concerns the proposed amendment to Article 146 (IV), the rationale behind the obligation for the municipalities to submit reports to the Milli Majlis is unclear. It suggests some form of control by the Legislature, which would go beyond the administrative supervision mentioned above. This unusual form of supervision may undermine the independence of local self-government.”

*CDL-AD(2009)010, Opinion on the Draft Amendments to the Constitution of the Republic of Azerbaijan*

#### **B. Legality/expediency control**

“20. The prefect should have the power to *suspend* – instead of to terminate - the acts of local self-government on ground of non-compliance with the Constitution or the laws of Ukraine. As the constitutionality and the legality of an act may fall within the competence of different courts, Article 144 paragraph 2 should provide for the duty of the prefect to refer the matter to the “*competent*” court.”

*CDL-AD(2015)028, Opinion on the Amendments to the Constitution of Ukraine regarding the Territorial Structure and Local Administration as proposed by the Working Group of the Constitutional Commission in June 2015*

“204. Article 135 provides for a posteriori review of the legality of the activities of local authorities, which is to be welcomed. Judicial review is not mentioned, while the jurisdiction of the administrative judiciary in matters of conflicts of competence is maintained (Article 139).”

*CDL-AD(2013)032, Opinion on the Final Draft Constitution of the Republic of Tunisia*

“45. “Delegated competences” [...] are powers given to organs of local government in order to perform tasks or edict acts that are still considered as State tasks or acts. The main consequence is that in these matters, the State control can also cover expediency. By contrast, municipalities’ own competences can only be subject to a control of legality.

46. As it stands, therefore, Article 1013(3) is at variance with the European Charter on Local Self-government, to the extent that it allows State supervision of the use of “own competences” not only with regard to legality, but also with regard to expediency.”

*CDL-AD(2010)008, Opinion on the Draft Constitutional Law on changes and amendments to the Constitution of Georgia (Chapter VII - Local Self-Government)*

“21. Especially worrying is the proposed amendment in Article 146 (III), according to which “the State oversees activities of municipalities”, because the exact scope of this supervision is not further specified in the Constitution. It is therefore essential that this supervision be interpreted as a mere “administrative supervision” for the purpose of Article 8 of the Charter.

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Such a supervision shall normally aim only at ensuring compliance with the law and with constitutional principles.”

**CDL-AD(2009)010, Opinion on the Draft Amendments to the Constitution of the Republic of Azerbaijan**

“101. The term “autonomy” in this Article would require further clarification. Art. 8.2 of the European Charter of Local Self-Government distinguishes between supervision of legality in the area of a municipality’s own competencies and supervision also with regard to expediency which is permissible in the area of delegated competencies.”

**CDL-AD(2007)017, Interim Opinion on the Draft Constitution of Montenegro**

“22. As is laid down in Art. 12.2, autonomous provinces and units of local self-governance are subject only to supervision of legality and constitutionality. According to Art. 192.1, “the Government shall be obliged to cancel the enforcement of the municipal general act which it considers to be in non-compliance with the ‘Constitution or the Law, and institute the proceedings of assessing its constitutionality or legality within five days. Although it is not expressly stated (unlike in Art. 186, concerning the decisions adopted by autonomous provinces), the proceedings obviously take place before the Constitutional Court (see para. 4 of Art. 167.1). It would have been preferable to let the Constitutional Court decide – in conformity with the provision in Art. 186 concerning the decisions of autonomous provinces - also on the interim ban on the enforcement of the municipal act.”

**CDL-AD(2007)004, Opinion on the Constitution of Serbia**

“23. According to Art. 192.2-3 “the Government may, under the terms specified by the Law, dismiss the Municipal Assembly” and “appoint a temporary body which shall perform the duties within the competences of the Assembly, taking into consideration the political and national composition of the dismissed Municipal Assembly”. This provision should be interpreted in the light of Art. 12.2: the dismissal should be possible only if the Assembly has acted in contradiction with the Constitution or the law. Because of the constitutional / legal nature of the measure, the Government’s competence of dismissal should have been subjected to the requirement of a prior assessment of the case by the Constitutional Court.”

**CDL-AD(2007)004, Opinion on the Constitution of Serbia**

“74. The Commission understands that Article 108.1 distinguishes the scope of State supervision over the exercise of delegated powers (first sentence of Article 108.1) from the supervision over the exercise of own powers of the communities (second sentence of Article 108.1). It is recalled in this respect that in accordance with the European Charter of Local Self Government State supervision over the exercise of the communities’ own powers should be confined to a review of legality.”

**CDL-INF(2001)017-e, Report of the Venice Commission on the Revised Constitution of the Republic of Armenia**

“55. However, article 8, paragraph 2 the European Charter, to which the Republic of Azerbaijan is a party, states that supervision should be limited to the compliance with the law: “Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities”. Adequacy is part of the expediency, as it can be understood from article 8, paragraph 2. Hence, to the extent that is not limited to the delegated tasks, the control of the



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“inadequacy” of the activities of a municipality by the State supervisory authority is not compatible with the European Charter. When assessing the 2009 constitutional amendments, the Commission emphasized, in connection with article 146. III of the Constitution stating that “the State oversees the activities of municipalities”, that this supervision should be interpreted as a mere “administrative supervision”, and should normally aim only at ensuring compliance with the law and with constitutional principles.

56. Moreover, as in the case of the “authority implementing administrative supervision over activity of municipalities”, “the relevant body of executive power” which is entitled to assess the report of the municipality (local authorities) is not identified in the draft law. In any case, the Venice Commission and the Directorate consider that a mere judgment by an executive body that the report submitted by a municipality is “inadequate”, which is likely to lead to a serious disruption of the operation of local government elected bodies, including their pre-term dismissal, is problematic from the standpoint of the constitutional protection provided to municipalities under 146. I of the Constitution, as well as of Article 8 of the European Charter.

57. As regards the procedure before the Milli Majlis, the text is unclear: the assessment expressed by the parliament is said to be the result of “hearing of the report of the municipality”. It is not quite clear, whether the municipality (local authorities) has the opportunity to be heard before the decision is taken, or only the report of the municipality referred by the local State executive body has to be heard.

58. Anyhow, irrespective of the supervisory authority, since it is based on an assessment of the expediency of activity of the municipality, including in its fields of competence, this procedure not compatible with the European Charter.”

***CDL-AD(2014)022, Joint Opinion of the Venice Commission and the Directorate of Democratic Governance of the Directorate General of Democracy of the Council of Europe on the revised draft law making amendment to the law “on the status of municipalities” of the Republic of Azerbaijan***

**C. Sanctions. The proportionality principle**

**1. Suspension of powers**

“9. [...] According to this Article, however, a mere non-respect of the pure formalities in the reporting procedure could result in a dissolution of the concerned municipality, and once the report was considered “inadequate” by the Milli Majlis, the powers of the members of the concerned municipality were to be pre-term suspended, which seems to be an excessive sanction under Articles 7 and 8 of the European Charter.”

“30. First, the draft law does not take into account the comment of the Venice Commission, in its 2009 Opinion, that “an interim sanction such as the suspension should not be applied before having assessed the reason of absence of the councillor” (§ 12).”

31. Furthermore, the suspension can be justified in the case of a criminal offence or even of serious misconduct of a councillor, whose behaviour would damage the municipality, in order to prevent or stop this damage. Yet, it is more difficult to argue for suspension in the case of a councillor who did not fulfil the obligations of his mandate. For example in France, the dismissal of a councillor failing to fulfil the duties of his mandate is declared by the administrative court, following a judicial procedure, not by the municipal council (Code général des Collectivités territoriales: art. L.2121-5).

32. Second, the specific terms of application of the proposed article 22-1 are problematic. For example, one may wonder whether the suspension is or is not an automatic one (“shall

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be temporarily suspended”), and, if this is not the case, who is empowered to pronounce this “temporarily suspension”. One may infer from other provisions that the decision would be taken by the municipality, which aggravates the risk of abuses at the local level.

33. Also, as the previous comments by the Venice Commission pointed out, while the draft law provides for the verification of the reasons of absence, there is no clear and articulated procedure of verification.[...]”

*CDL-AD(2014)022, Joint Opinion of the Venice Commission and the Directorate of Democratic Governance of the Directorate General of Democracy of the Council of Europe on the revised draft law making amendment to the law “on the status of municipalities” of the Republic of Azerbaijan*

“118. Under this Article acts of local self-government bodies may be suspended by the Head of state administration with a simultaneous appeal to the court, for reasons of nonconformity to the Constitution of Ukraine and to laws. This open-ended provision may raise an issue of proportionality of the interference on the exercise of the local self-government rights: while the power to challenge the conformity of local self-government acts in the court is perfectly legitimate (and even to be required), the possibility to decide on the suspension of their effects should be reserved to the competent court (upon request of the Head of state administration) in case this is required (e.g. for the protection of citizens’ rights, which would be difficult to restore, or to avoid financial losses, which would be difficult to recover).”

***CDL-AD(2009)024, Opinion on the Draft Law of Ukraine amending the Constitution presented by the President of Ukraine***

## 2. Dismissal / termination of powers

“24. It seems fully justified that the President of Ukraine, in his or her capacity as guarantor of the constitution and of local self-government, should have the power to intervene – more rapidly and efficiently than the Verkhovna Rada - when the self-government bodies overstep their constitutional and legal competences and pose a threat to the sovereignty, territorial integrity and security of the state. The President’s power, however, should be limited to *suspending* - as opposed to terminating - the powers of the self-government bodies, and Item 8<sup>1</sup> and Article 144 paragraph 3 should be amended accordingly. A short deadline should be put to the Constitutional Court to decide the matter. The self-government bodies should immediately resume their powers in case the Constitutional Court ruled that the President’s suspension decision was unconstitutional and the interim authorised government official should immediately cease his or her functions. In the opposite case, new local elections should be immediately called by the Verkhovna Rada. This should be explicitly provided for in the Constitution.

25. Article 144 provides for the possibility for the affected local self-government authority and for at least 45 MPs to bring the President’s decision before the Constitutional Court. However, to guarantee constitutionality the President should be obliged to subject on his or her own initiative the matter to the Constitutional Court for final decision taking (similarly to what is provided under para. 2 of Article 144 in respect of decisions by the Prefect).”

*CDL-AD(2015)028, Opinion on the Amendments to the Constitution of Ukraine regarding the Territorial Structure and Local Administration as proposed by the Working Group of the Constitutional Commission in June 2015*

“26. Such provisions can hardly be considered as compatible with article 7 (paragraph 1) of the European Charter, according to which: “[t]he conditions of office of local elected representatives shall provide for free exercise of their functions”. While the other (objective) grounds for early termination listed by Article 22 are linked to serious failures, the three-time-

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consecutive-absence requirement (paragraph 6) seems to be a less serious ground and can be justified if there exists “good excuse” [...].”

“27. In order to fully guarantee the free and independent exercise of the municipal member’s powers in accordance with the European Charter, these provisions should be narrowly interpreted and only applied to exceptional cases.”

“60. Regrettably, there is no possibility provided by the draft law to take into account whether the report at issue is a very serious case of inadequacy or, on the contrary, a rather venial one: the decision will be the same regardless of the seriousness of the inadequacy [...].”

“67. The proposal allowing pre-term dismissal of local elected bodies, based on an expediency assessment, and the related procedure, raise serious issues of compatibility with the European Charter. It enables abuse and arbitrary dismissal of local elected bodies and, due to the vagueness of the wording, gives the central government a strong mean of pressure upon municipalities likely to oppose to its policies. The Venice Commission and the Directorate recall that procedures and powers of State authorities directed to a kind of political tutelage of municipalities are in breach of the European standards on local self-government. Also, while the involvement of the local population may be welcomed, increased clarity is needed as to the framework of their participation.”

*CDL-AD(2014)022, Joint Opinion of the Venice Commission and the Directorate of Democratic Governance of the Directorate General of Democracy of the Council of Europe on the revised draft law making amendment to the law “on the status of municipalities” of the Republic of Azerbaijan*

“26. According to Art. 192.2-3 “the Government may, under the terms specified by the Law, dismiss the Municipal Assembly” and “appoint a temporary body which shall perform the duties within the competences of the Assembly, taking into consideration the political and national composition of the dismissed Municipal Assembly”. This provision should be interpreted in the light of Art. 12.2: the dismissal should be possible only if the Assembly has acted in contradiction with the Constitution or the law. Because of the constitutional / legal nature of the measure, the Government’s competence of dismissal should have been subjected to the requirement of a prior assessment of the case by the Constitutional Court.”

**CDL-AD(2007)004, Opinion on the Constitution of Serbia**

“27. The proposed Article 109.1 of the Constitution gives the Government the power to dismiss, in cases prescribed by law, the Head of Community and to dissolve the Council of Aldermen. The Commission underlines that the use of this power may endanger the principle of local self-government, especially as the provision no longer requires the Government to consult the Constitutional Court before taking the decision.

28. In respect of the power of the Government to discharge the Head of community (proposed Article 109 of the Constitution), the Commission considers that in addition to the cases provided for by law, this should be possible “on the basis of a conclusion of the Constitutional Court”.”

*CDL-AD(2004)044, Interim Opinion on Constitutional Reforms in the Republic of Armenia*

**D. Legal protection of local self-government**

“14. [...] The President’s power, however, should be limited to *suspending* - as opposed to terminating - the powers of the self-government bodies, and Item 8<sup>1</sup> and Article 144 paragraph 3 should be amended accordingly. A short deadline should be put to the Constitutional Court to decide the matter. The self-government bodies should immediately

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resume their powers in case the Constitutional Court ruled that the President's suspension decision was unconstitutional and the interim authorised government official should immediately cease his or her functions. In the opposite case, new local elections should be immediately called by the Verkhovna Rada. This should be explicitly provided for in the Constitution.

29. Article 144 provides for the possibility for the affected local self-government authority and for at least 45 MPs to bring the President's decision before the Constitutional Court. However, to guarantee constitutionality the President should be obliged to subject on his or her own initiative the matter to the Constitutional Court for final decision taking (similarly to what is provided under para. 2 of Article 144 in respect of decisions by the Prefect)."

*CDL-AD(2015)028, Opinion on the Amendments to the Constitution of Ukraine regarding the Territorial Structure and Local Administration as proposed by the Working Group of the Constitutional Commission in June 2015*

"26. [...] It is also noted that Article 144 and 145 of the Constitution and article 22 and 23 of the Municipalities Law give no guarantee of a fair hearing to the councillor and, in case of a conflict in a municipality, the conditions for terminating the mandate of a councillor can be easily manipulated, for example when obstacles prevent the councillor to attend meetings. While in principle, "the State shall secure that municipal members may implement their powers efficiently and without obstacles" (article 20, paragraph 1 of the Municipalities Law), the law provides no remedy to enforce this provision."

*CDL-AD(2014)022, Joint Opinion of the Venice Commission and the Directorate of Democratic Governance of the Directorate General of Democracy of the Council of Europe on the revised draft law making amendment to the law "on the status of municipalities" of the Republic of Azerbaijan*

"65. The Commission welcomes the provision of 101 par 5 enabling the bodies of local self-government to challenge the constitutionality of norms concerning their constitutional rights and powers and to bring before the Constitutional Court disputes with central government authorities."

*CDL-INF(2001)017, Report of the Venice Commission on the Revised Constitution of the Republic of Armenia*

## V. Property rights

"30. The European Charter of Local Self-Government currently makes no specific provision for a "right to property" of local authorities. However, the absence in the domestic order of such a right undermines the "ability" of local authorities to "manage" local affairs "under their own responsibility" and is difficult to reconcile with the subsidiarity principle itself. Therefore, the introduction of the new Art 102.(a) is to be welcomed. Recently, the importance of municipalities' right to property has been given formal recognition by the Congress of Local and Regional Authorities of the Council of Europe by the inclusion in its Draft Additional Protocol to the Charter of November 2007 of an article on property of local authorities."

*CDL-AD(2009)024, Opinion on the Draft Law of Ukraine amending the Constitution presented by the President of Ukraine*

"78. It is welcome that, contrary to the draft Constitution, municipalities will have the right to own property."

*CDL-AD(2007)047, Opinion on the Constitution of Montenegro*

## **VI. Equalisation /solidarity mechanisms**

“202. Such an equalisation mechanism seeks to ensure – at least to a certain extent – a degree of solidarity between the better-off authorities and the less well-off throughout the country [...].

203. In this context, it is nonetheless imperative to avoid the emergence of undesirable phenomena such as solidarity mechanisms which would be so strong as to deprive the most successful and efficient local authorities of all their efforts, in order to allocate the amounts thus gathered to entities whose financial difficulties are a result not of structural poverty but of mismanagement: if it is possible for a municipality to become poor by undue spending, such an approach to management does not deserve to be rewarded through a financial equalisation mechanism.”

*CDL-AD(2013)032, Opinion on the Final Draft Constitution of the Republic of Tunisia*

## **VII. Protection of local authority boundaries. Creation/abolition/modification of local self-government entities**

“28. [...] At any rate, it should be evident that - as a rule - the consultation with the people concerned is required in the case of the creation and abolition of the entities of the local self-government. [...].”

*CDL-AD(2010)008, Opinion on the Draft Constitutional Law on changes and amendments to the Constitution of Georgia (Chapter VII - Local Self-Government)*

“31. [...] The added competence is intended to enable (*not* require) the establishment of forms of local government for settlements within municipalities and cities. There can be nothing objectionable in principle to the promotion of such structures, although there is no Charter requirement for the establishment of communities within units of local self-government.”

***CDL-AD(2008)016, Opinion on the Draft Amendments to the Constitution of Republika Srpska***

“31. The 2001 draft Constitution (Article 110) provided that “changes in the territorial organisation require a consultative referendum in the communities concerned.” This requirement does not appear in the 1<sup>st</sup> set of proposals. The Commission strongly recommends, in the interests of the local self-government, to include in the proposed Article 110 of the Constitution, the explicit requirement of local referenda and consultation in conformity with Article 5 of the European Charter of Local Self-Government.”

*CDL-AD(2004)044, Interim Opinion on Constitutional Reforms in the Republic of Armenia*

## **VIII. Local authorities' right to associate**

“206. Article 137 authorises co-operation and partnerships between local authorities, including the establishment of “external relations”, although the possibility of joining international or regional federations of local authorities is not explicitly provided for.”

*CDL-AD(2013)032, Opinion on the Final Draft Constitution of the Republic of Tunisia*

“116. [...]the right to delegate or conclude agreements is not sufficient and it is necessary to recognise the right to form consortia or other joint institutions to perform tasks of common

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interest. This right should clearly be distinguished (as in Art 10 of the ECLSG) from the right to belong to associations for the protection and promotion of common interests.”

**CDL-AD(2009)024, *Opinion on the Draft Law of Ukraine amending the Constitution presented by the President of Ukraine***

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**IX. APPENDIX**

***CDL-AD(2015)038, Second Opinion on the Draft Amendments to the Constitution (in particular to Chapters 8, 9, 11 to 16) of the Republic of Armenia***

***CDL-AD(2015)028, Opinion on the Amendments to the Constitution of Ukraine regarding the Territorial Structure and Local Administration as proposed by the Working Group of the Constitutional Commission in June 2015***

***CDL-AD(2015)014, Joint Opinion on the draft law "on introduction of changes and amendments to the Constitution" of the Kyrgyz Republic***

***CDL-PI(2015)008 Preliminary Opinion on the Constitutional Amendments regarding the Territorial Structure and Local Administration of Ukraine (H. SUCHOCKA, K. TUORI, A. DELCAMP)***

***CDL-AD(2014)037, Opinion on the Draft law amending the Constitution of Ukraine, submitted by the President of Ukraine on 2 July 2014***

***CDL-AD(2014)022, Joint Opinion of the Venice Commission and the Directorate of Democratic Governance of the Directorate General of Democracy of the Council of Europe on the revised draft law making amendment to the law "on the status of municipalities" of the Republic of Azerbaijan***

***CDL-AD(2014)010, Opinion on the Draft Law on the Review of the Constitution of Romania***

***CDL-UD(2013)001, Proceedings/Actes - UniDem Seminar/Séminaire UniDem "Constitutional Design/Design constitutionnel), Helsinki, Finland/Finlande, 21-22 May/mai 2012***

***CDL-AD(2013)032, Opinion on the Final Draft Constitution of the Republic of Tunisia***

***CDL-AD(2010)008, Opinion on the Draft Constitutional Law on changes and amendments to the Constitution of Georgia (Chapter VII - Local Self-Government)***

***CDL-AD(2009)024, Opinion on the Draft Law of Ukraine amending the Constitution presented by the President of Ukraine***

***CDL-AD(2009)010, Opinion on the Draft Amendments to the Constitution of the Republic of Azerbaijan***

***CDL-AD(2009)049, Opinion on the Draft Law on additions to the Law on the status of municipalities of the Republic of Azerbaijan adopted by the Venice Commission at its 81st Plenary Session (Venice, 11-12 December 2009) prepared in consultation with The Directorate General of Democracy and Political Affairs of the Council of Europe***

***CDL-AD(2008)016, Opinion on the Draft Amendments to the Constitution of Republika Srpska***

***CDL-AD(2008)009, Opinion on the Constitution of Bulgaria***

***CDL-AD(2007)047, Opinion on the Constitution of Montenegro***

***CDL-AD(2007)017, Interim Opinion on the Draft Constitution of Montenegro***

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***CDL-AD(2007)004, Opinion on the Constitution of Serbia***

***CDL-AD(2005)025, Final Opinion on Constitutional Reform in the Republic of Armenia***

***CDL-AD(2004)044, Interim Opinion on Constitutional Reforms in the Republic of Armenia***

***CDL-AD(2004)018, Opinion on the Draft Constitutional Law of Georgia on the Status of the Autonomous Republic of Adjara***

***CDL-AD(2004)014, Opinion on the Draft amendments to the Constitution of the Federation of Bosnia and Herzegovina***

***CDL-AD(2003)004, Opinion on the Draft Revision of the Constitution of Romania (Unfinished texts by the Committee for the revision of the Constitution)***

***CDL-AD(2002)033, Opinion on the Draft Amendments to the Constitution of Kyrgyzstan***

***CDL-INF(2001)015, Opinion on the Amendments of 9 November 2000 and 28 March 2001 to the Constitution of Croatia***

***CDL-INF(2001)017, Report of the Venice Commission on the Revised Constitution of the Republic of Armenia,***

***CDL(2001)027, Avis sur les articles 104 à 110 relatifs à l'autonomie locale du projet de révision de la Constitution de la République d'Arménie***

***CDL-INF(1997)002, Opinion on the Constitution of Ukraine***

***CDL-INF(1996)002, Opinion on the regulatory concept of the Constitution of the Republic of Hungary / Avis sur les principes directeurs de la nouvelle Constitution de la République de Hongrie, item 12***

***CDL(1994)011, Opinion on the Constitution of the Russian Federation adopted by popular vote on 12 December 1993***

***CDL(1993)001rev, Decentralisation of the state in the process of European integration: opinion***