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COMPILATION

OF VENICE COMMISSION OPINIONS AND REPORTS

CONCERNING CONSTITUTIONAL AND LEGAL PROVISIONS

ON THE PROTECTION OF LOCAL SELF-GOVERNMENT¹

¹ *This document will be updated regularly. This version covers opinions and reports/studies adopted up to and including the Venice Commission's 133rd Plenary Session (16-17 December 2022).*

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I. 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).

II. Constitutional guarantees for local self-government

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

“36. Second, in the context of the decentralisation debate, also present in the current constitutional discussion in Chile, the role of the Senate is important:

“The recent development of constitutionally enshrined regionalisation or decentralisation points to the same outcome. Any highly decentralised state needs a second chamber to ensure dialogue between the centre and the periphery. Since the Council of Europe considers decentralisation, or more precisely local self-government, to be an essential component of democracy, second chambers clearly have a bright future.”

“83. The Inter-American Commission on Human Rights (IACHR) has pointed out that “indigenous peoples can exercise their right to autonomy or self-government through their own authorities and institutions, which may be traditional, but also of recent creation,” and has pointed out that this can be beneficial since “respecting the rights to indigenous autonomy or self-government, allows States to guarantee stability and a harmonious and democratic coexistence of all the inhabitants of their territories.”

CDL-AD(2022)004, Chile - Opinion on the drafting and adoption of a new Constitution

“8. Article 13 of the Constitution stipulates that “[l]ocal government in the Republic of Albania is founded upon the basis of the principle of decentralization of power and is exercised according to the principle of local autonomy.” Articles 108 to 115 of the Constitution deal with local government overall and define the local government bodies, their functioning and competencies. More specifically, Article 108 (1) of the Constitution stipulates that “[c]ommunes or municipalities and regions are the units of local government” and that “[o]ther units of local government are regulated by law”, underlining their independence from the central state institutions.

9. Article 109 of the Constitution defines municipal councils and mayors by stipulating that “[t]he representative organs of the basic units of local government are the councils, which are elected every four years by general direct elections and by secret ballot” and that “[t]he executive organ of a municipality or commune is the mayor, who is elected directly by the people in the manner contemplated in paragraph 1 of this article.”

28. In conclusion, the Venice Commission is of the opinion that municipal councillors and mayors are “functionaries of bodies foreseen in the Constitution” in the sense of Article 131 (1) e) of the Constitution. However, the competence of the Constitutional Court does not include the examination of the validity of local elections. This does not prevent the Constitutional Court from exercising its control over electoral legislation.”

CDL-AD(2021)037, Albania - Amicus Curiae Brief on the competence of the Constitutional Court regarding the validity of the local elections held on 30 June 2019

113. At the local level, the Constitution foresees local self-governance, as regulated in Section IV of the Draft Constitution. Article 111(1) stresses that this involves “real opportunity for local communities to independently decide issues of local significance in their own interests and under their own responsibility”. Local self-governance shall be implemented by local communities either directly, or through local self-governance bodies (Article 111(3)). According to Article 112(1), the system of local self-governance bodies involves representative bodies and executive bodies. Under paragraph 2 of this provision, executive bodies of local self-governance are accountable to the representative bodies in their activity. It is welcome that the principle of independence is clearly stated (Article 111(1) and (5)), as well as the principle that the transfer of competence must be accompanied by corresponding financial resources (Article 114(2)). In addition, **it is also recommended to specifically introduce in Section IV of the Draft Constitution the principle of subsidiarity meaning that each level of organisation must receive as many powers as it is capable of exercising satisfactorily.**

114. Section IV of the Draft Constitution does not elaborate on the attribution and respective competences between the central and local self-government representatives, which may potentially lead to conflicts of attribution and other controversies, which should ideally be determined by the Constitutional Court. **It is recommended to spell out at the constitutional level the “own competences” of local self-government bodies, or, at a minimum, state that this should be determined by a constitutional law.** This would avoid legislators potentially taking away powers from local self-governments.”

CDL-AD(2021)007, Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic

“100. Article 80 (2), which defines the missions of the President, provides that s/he “shall ensure the coordinated functioning and interaction of bodies forming the unified system of public authority”. Article 132 (3) stipulates that “Local self-government bodies and state power bodies

shall be integrated in the unified system of public authority in the Russian Federation, and shall cooperate to most efficiently resolve tasks in the interests of population inhabiting the relevant territory.”

CDL-AD(2021)005, Russian Federation - Interim opinion on constitutional amendments and the procedure for their adoption

“18. The Venice Commission took into account, for the present analysis, the local self-government standards laid down in the European Charter for Local Self-Government. Turkey is a Party to the Charter, which contains inter alia the following provisions:

“Article 3 - Concept of local self-government

“1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.”

Article 4 - Scope of local self-government

“4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law”.

Article 7 - Conditions under which responsibilities at local level are exercised

“1. The conditions of office of local elected representatives shall provide for free exercise of their functions.”

Article 8 - Administrative supervision of local authorities' activities

“2. 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.

3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.”

Article 9 - Financial resources of local authorities

“1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.”

“25. Article 127 of the Constitution further establishes that the formation, duties and powers of the local administrations “shall be regulated by law”, in accordance with the principle of local administration. This provision further states that the central administration has the power of administrative tutelage over the local administrations, as a way to ensure the functioning of local services in conformity with the principle of the integrity of the administration, to secure uniform public service and meet local needs properly. The Venice Commission has noted the Congress’ repeated calls for the abolition of administrative tutelage and a genuine decentralisation in Turkey.”

CDL-AD(2017)021, Türkiye - Opinion on the Provisions of the Emergency Decree-Law N° 674 of 1 September 2016 which concern the exercise of Local Democracy

“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.⁹ 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, Tunisia - Opinion on the Final Draft Constitution of the Republic

“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 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, Georgia - Opinion on the Draft Constitutional Law on changes and amendments to the Constitution (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, Ukraine - Opinion on the Draft Law of Ukraine amending the Constitution presented by the President

“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. I), 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 (I) 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, Azerbaijan - Opinion on the Draft Amendments to the Constitution of the Republic

“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, Kyrgyzstan - Opinion on the Draft Amendments to the Constitution

"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, Ukraine - Opinion on the Constitution

"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, Armenia - Report of the Venice Commission on the Revised Constitution

“[...] 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, Croatia - Opinion on the Amendments of 9 November 2000 and 28 March 2001 to the Constitution

see also

CDL-INF(1996)002, Hungary - Opinion on the regulatory concept of the Constitution of the Republic of Hungary, 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, Ukraine - 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, Ukraine - 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, Romania - Opinion on the Draft Law on the Review of the Constitution

“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 Tunisia - Opinion on the Final Draft Constitution

“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, Bulgaria - Opinion on the Constitution

“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, Romania - Opinion on the Draft Revision of the Constitution (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, Croatia - Opinion on the Amendments of 9 November 2000 and 28 March 2001 to the Constitution

C. The legal rank of the legislation on local self-government

“112. A qualified majority may also be required for organic laws to preserve the reinforced protection of certain important matters (such as the composition of the Chambers of the Parliament, the acquisition of citizenship, protection of property, the freedom of association, the status of the Public Defender, participation of political associations in elections, the election of

the President, the immunity of the President, the Constitutional Court, the appointment of the judges, the National Bank and the Council of National Security and local self-government, etc. (CDL-AD(2010)028), § 23). However, the subject-matter of organic laws should be defined with sufficient precision; for example, it is inappropriate to require that all human rights matters should be regulated by an organic law since the notion of “human rights” is too broad and imprecise (CDL-AD(2013)032, § 96).”

CDL-AD(2019)015, Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist

“125. [...] Other key aspects of this Charter could be included in the Constitution, such as the right of local authorities to sufficient resources of their own. [...]”

CDL-AD(2019)003, Luxembourg – Opinion on the proposed revision of the Constitution

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

CDL-AD(2015)028, Ukraine - 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, Ukraine - 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, Tunisia - Opinion on the Final Draft Constitution

“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, Georgia - Opinion on the Draft Constitutional Law on changes and amendments to the Constitution (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

2. The principle of financial autonomy for local self-government

“77. As far as the formation of the authorities of the Autonomous Republic of Crimea and local authorities in the de-occupied territories is concerned, the rapporteurs noted that Article 17(3) grants one year for local councils and their executive bodies to receive regional and national funding. The draft law does not provide a justification for the measure and for that specific time limit. However, the budget of local bodies is an issue of utmost importance, since it has a direct impact on the performance of public functions of these local bodies. In this connection, attention is drawn to international standards which include the principle of financial autonomy of local authorities and the prerogative to adequate financial resources. It would be advisable to reconsider the one-year time limit in Article 17(3) and to make it clear how the measure foreseen in this draft provision fits in the general funding regime of local authorities.”

CDL-AD(2021)038, Ukraine - Opinion on the draft law “On the Principles of State Policy of the Transition Period

“117. It is noted that compared to the current Constitution, local keneshes no longer have the power to “[i]mpose local taxes and dues as well as decide on preferences on them” (see Article 112(3)(3) of the current Constitution). Such amendment is questionable as it is important to secure that at least part of the total funds of local self-governance bodies derive from “own income” i.e. local taxes and charges whose rate they can determine. This is essential to contribute to the financial autonomy of local self-governance bodies. **It is recommended to reconsider such deletion.**”

CDL-AD(2021)007, Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic

“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, Armenia - Second Opinion on the Draft Amendments to the Constitution (in particular to Chapters 8, 9, 11 to 16)

“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, Ukraine - 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, Serbia - Opinion on the Constitution of Serbia

III. Scope and powers of local self-government

A. Own powers versus delegated powers

“34. Finally, Article 3.3 states that “*The adoption of new normative acts may not be the subject of a local referendum.*” This is in accordance with Article 144 of the Constitution of Ukraine, which stipulates that “*Bodies of local self-government, within the limits of authority determined by law, adopt decisions that are mandatory for execution throughout the respective territory* “, therefore entrusting these bodies with regulatory powers. The Venice Commission and ODIHR recommend clarifying the term “regulatory acts” (or to draft a clear list of acts and decisions that can be submitted to the local referendum).”

CDL-AD(2022)038, Ukraine - Urgent joint opinion of the Venice Commission and the OSCE/ODIHR on the draft law on local referendum

“43. It is worth noting that Article 16 par 1 second sentence currently defines the “meaning and content of the activity of the *legislative* [emphasis added], executive power and self- governance bodies” through the lens of human rights and freedoms whereas the new provision no longer refers to the legislative power, while still covering the executive power and self-governance bodies. It is unclear why the reference to the legislative power is now omitted, since **human rights and fundamental freedoms should be binding on all three state powers.**”

CDL-AD(2017)025, Kyrgyzstan - Endorsed joint opinion on the draft law "on Introduction of amendments and changes to the Constitution"

“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, Armenia - Second Opinion on the Draft Amendments to the Constitution (in particular to Chapters 8, 9, 11 to 16)

“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, Ukraine - 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” competences¹) 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.

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, Georgia - Opinion on the Draft Constitutional Law on changes and amendments to the Constitution (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, Ukraine - 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, Georgia - Opinion on the Draft Constitutional Law on changes and amendments to the Constitution (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, Armenia - Interim Opinion on Constitutional Reforms in the Republic of Armenia

B. De-concentrated versus decentralised 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, Ukraine - 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, Kyrgyzstan - 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, Ukraine - 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, Romania - Opinion on the Draft Revision of the Constitution (Unfinished texts by the Committee for the revision of the Constitution)

IV. Election versus appointment of local self-government bodies

“115. Article 113(1) of the Draft Constitution provides that “[d]eputies of local councils (*keneshes*) shall be elected by citizens residing in the respective administrative-territorial unit in the manner prescribed by law with equal opportunities”. However, nothing is said as to the type of electoral system that will be applied. It is generally considered as a good practice to settle such major questions directly in the Constitution instead of leaving them to constitutional legislation. **The legal drafters should consider specifying the type of electoral system for the election of members of local *keneshes* in the Draft Constitution itself.**”

CDL-AD(2021)007, Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic

“74. The principle of democracy requires that the elections have to be held periodically – including on local (municipal) level. This stems from Article 25(b) of the International Covenant on Civil and Political Rights and Article 3 of the First Protocol to the European Convention on Human Rights and has been identified as one of the principles underlying Europe's electoral heritage in the Code of Good Practice in Electoral Matters.³⁴ Without periodic elections at the local level, local self-government would lack the required legitimacy.

75. Periodic elections are thus both a requirement of the principle of democracy and a fundamental right. Any restriction of the right to take part in periodic elections has to be provided

for in the law, have a legitimate aim and be proportionate. The same criteria apply to local elections.”

CDL-AD(2019)019, Albania - Opinion on the powers of the President to set the dates of elections

“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, Tunisia - Opinion on the Final Draft Constitution

“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, Armenia - Final Opinion on Constitutional Reform

“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, Armenia - Interim Opinion on Constitutional Reforms

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, Armenia - Report of the Venice Commission on the Revised Constitution

A. Appointment

“118. Of note, at the local level, there are also “local public administrations”, which exercise executive power on the territory of the respective administrative-territorial unit (Article 93 of the Draft Constitution). Under Article 70(1)(6), the President shall appoint and dismiss “heads of local public administrations”, without any reference to the involvement of local self-governance bodies in such appointments/dismissals *per se*. A similar provision conferring this prerogative to the Prime Minister without involving local self-governance bodies was criticised by ODIHR and the Venice Commission in their 2015 Joint Opinion as constituting a means to asserting central control over certain matters that fall under subnational control in other jurisdictions, instead of pursuing increased local autonomy. This provision is also problematic as it fails to set out the conditions and criteria for such cases, thus leaving wide discretionary powers to the President in this respect, which may ultimately make it more difficult to manage tensions between the local state administrations and the central government. As recommended in the 2015 Joint Opinion, **the legal drafters should consider incorporating mechanisms that would enhance transparency, and reduce the potential for conflict between delegated state administration operating in local communities, and local self-governance bodies.**”

CDL-AD(2021)007, Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic

“45. The Constitution of the Republic of Kazakhstan is supposed to keep the current procedure for appointment of akims of regions, major cities and the capital. The procedure for appointment or election to the position of other administrative-territorial units’ akims is to be established by law and not by a statutory act of the President.

46. Thus, certain centralization of public administration at the so-called “middle-level” is clearly preserved. It is still unknown what will be the procedure for filling vacancies of akim positions of other administrative-territorial units. However, referring this matter to the Parliament, which will make decision by adoption of a law, indicates as a whole a trend towards the democratisation of form and procedure of addressing this issue.

47. At the same time there is some inconsistency in the proposed wording of the Article 87. In accordance with the par. 4 of the Article 87 of the draft “the akims of other administrative-territorial units are appointed or elected to office pursuant to the procedure established by law. The President has the discretion to release akims from office”.

48. However, if the procedure for the appointment or election of akims of other administrative-territorial units is determined by the law, it would be logical if the release of akims from office was the subject of legislative regulation too. It would be reasonable if it was the law that authorized the President to release akims from office in certain cases. This would improve the stability and certainty in the relationship between the authorities.”

CDL-AD(2017)010, Kazakhstan - Opinion on the amendments to the Constitution

“89. Under the revised Article 89 par 7, the Prime Minister shall now appoint and dismiss the heads of local public administrations without co-ordinating this with local keneshes. The reference to having such actions conducted in accordance with “procedures of law” has also

been removed. In this respect, the OSCE/ODIHR and the Venice Commission refer to their legal analysis pertaining to similar amendments, contained in the 2015 Joint Opinion. Local public administrative bodies are local branches of the central state, as opposed to local self-governance bodies, which are headed by local keneshes. While there is thus no obligation for the Prime Minister to consult with local keneshes when appointing the heads of local public administration, these types of consultations constitute a good practice that could help avoid friction between central and local representatives, especially in areas with significant minority populations. The removal of the reference to “procedures of law” is also of concern here, as it could suggest that the Prime Minister would have full discretion to appoint local public administrative officials without having to follow specific procedures and criteria. It is, therefore, recommended to reconsider the current amendments. Rather, as recommended in the 2015 Joint Opinion, **the drafters, when amending these provisions of the Constitution, should consider incorporating mechanisms that would enhance transparency and reduce the potential for conflict between delegated state administration operating in local communities and local self-governance bodies.**”

CDL-AD(2016)025, Kyrgyzstan - Endorsed joint opinion on the draft law "on Introduction of amendments and changes to the Constitution"

V. Accountability and supervision of local self-government bodies

A. Supervisory authority

“54. The presidential powers remain strong at the level of local self-governance. The President monitors compliance with the law by local authorities and self-government bodies, and has the right to suspend the decisions of local councils (Article 84, para 26). In addition, the Council of the Republic, where the President’s influence is considerable, can cancel these decisions and even dissolve a council (Article 98, paras. 5 and 6). No judicial guarantees, such as involvement of the Constitutional Court, are included.”

CDL-AD(2022)035, Belarus - Final Opinion on the Constitutional Reform

“125. [...] Furthermore, Article 125 of the draft revision provides for the possibility of setting aside decisions by the municipal authorities not only in the event of illegality but also where they are contrary to the general interest, and this may, in some cases, be in breach of Article 8 of the Charter, under which “any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles”. Article 125, 2nd paragraph, which states only that the Government is entitled to “dissolve municipal councils in the interest of the management of the municipality”, requires clarification.”

CDL-AD(2019)003, Luxembourg – Opinion on the proposed revision of the Constitution

“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, Armenia - Second Opinion on the Draft Amendments to the Constitution (in particular to Chapters 8, 9, 11 to 16)

“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, Ukraine – 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, Azerbaijan - 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”

“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.”

“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, Georgia - Opinion on the Draft Constitutional Law on changes and amendments to the Constitution (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, Azerbaijan - Opinion on the Draft Amendments to the Constitution

B. Legality and 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, Ukraine - 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

“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 “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 is not compatible with the European Charter.”

CDL-AD(2014)022, Azerbaijan - 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”

“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, Tunisia - Opinion on the Final Draft Constitution

“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, Georgia - Opinion on the Draft Constitutional Law on changes and amendments to the Constitution (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. Such a supervision shall normally aim only at ensuring compliance with the law and with constitutional principles.”

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

“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, Montenegro - Interim Opinion on the Draft Constitution

“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.

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, Armenia - Report of the Venice Commission on the Revised Constitution

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 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, Azerbaijan - 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”

“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, Ukraine - Opinion on the Draft Law of Ukraine amending the Constitution presented by the President of Ukraine

2. Dismissal – Termination of powers

“154. However, the grounds and the mechanism for mayors' early removal from the office do not meet appropriate standards of certainty and foreseeability. Article 217(3) stipulates that dismissal of the mayor may be initiated “if he/she fails to respect the interests of the local community, to exercise properly the powers of locally elected official provided by law, [or] violates moral and ethical rules, facts confirmed in the prescribed manner”. The Venice Commission previously emphasised that the practice of an early recall is only acceptable under specific and clear conditions, “coupled with adequate and effective procedural safeguards to prevent its misuse”. It is recommended that the mechanism for an early recall of mayors is clarified, providing for restrictive grounds under which it may occur.”

CDL-AD(2022)025, Republic of Moldova - Joint opinion on the draft electoral code

“116. Article 70(2)(3) of the Draft Constitution provides that the President, in cases and according to the manner prescribed by law, can dissolve local councils (keneshes) as well as appoint early elections to local councils. The use of this power may endanger the principle of local self-government. It would be preferable to limit the President’s power to the possibility of suspending - as opposed to terminating - the powers of the self-government bodies or, at a minimum, to introduce additional safeguards, such as a requirement that the President consult the Constitutional Court or other independent body before taking the decision. Moreover, nothing is said as to the conditions/circumstances in which such dissolution may be decided, e.g., when the self-government body oversteps their constitutional and legal competences and poses a threat to the sovereignty, territorial integrity and security of the state. **It is recommended to reconsider such prerogative or to add safeguards to limit the potential discretionary use of such power, for instance by requiring a decision of the Constitutional Court beforehand and specifying the circumstances in which such decision may be taken.**”

CDL-AD(2021)007, Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic

“49. The draft proposes to revise the procedure for early termination of the powers of maslikhats. In this regard, the new paragraph 5 of the Article 86 of the Constitution, as opposed to the existing practice, proposes to establish that the powers of a maslikhat shall be terminated early by the President of the Republic after consultation with the Prime Minister and the Chairs of both chambers of the Parliament.

50. Undoubtedly, this procedure is in general more democratic in nature than the current one because there are elements of collegiality in the decision making process, and in this regard it can be supported. Engaging other public bodies in the procedure for the early termination of powers of maslikhats, will be a platform for a more objective assessment of the circumstances that require early termination of powers. Meanwhile it would be preferable if some statutory act (law) gave an indicative list of grounds for such early termination of maslikhat’s powers.”

CDL-AD(2017)010, Kazakhstan - Opinion on the amendments to the Constitution of Kazakhstan

“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 81 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, Ukraine - 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-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, Azerbaijan - 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”

“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, Serbia - Opinion on the Constitution

“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, Armenia - Interim Opinion on Constitutional Reforms

D. Legal protection of 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 81 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.

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, Ukraine – 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, Azerbaijan - 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”

“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, Armenia - Report of the Venice Commission on the Revised Constitution

VI. Property rights

“54. Article 38 of the Constitution deals with the property of the State and local governments. Article 7 of the Ninth Amendments modifies it as follows (changes marked):

(1) The property of the Hungarian State and of municipal governments shall be considered national assets. National assets shall be managed and protected for the purpose of serving the public interest, satisfying common needs and preserving natural resources, taking also into

account the needs of future generations. The requirements for safeguarding and protecting national assets, and for the prudent management thereof, shall be laid down in an implementing act.

(2) The scope of exclusive ownership and economic activity deemed to be the sole domain of the State, as well as the limits and conditions for the alienation of national assets of special import for national economy considerations shall be defined by an implementing act with regard to the objectives referred to in Paragraph (1).

(3) National assets may be transferred only for purposes specified by law, with the exceptions defined by law, taking costs and benefits into account.

(4) Contracts for the transfer or utilisation of national assets may only be concluded with an organization that is able to satisfy the requirement of transparency in terms of ownership structure, organisation, and the activities relating to the management of the alienated or utilised national assets.

(5) Economic operators owned by the State or municipal governments shall conduct business prudently and independently, in accordance with the relevant legislation, under the requirements of legality, efficiency and effectiveness.

(6) *The establishment, operation and termination of, and the performance of public duty by, a public interest asset management foundation performing public duty shall be regulated in a cardinal Act.*

CDL-AD(2021)029, Hungary - Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020

“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, Ukraine - 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, Montenegro - Opinion on the Constitution

VII. 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, Tunisia - Opinion on the Final Draft Constitution

VIII. Protection of local authority boundaries – Creation / Abolition / Modification of local-self-government bodies

“10. In that context, in the Opinion it prepared, at the request of the Parliamentary Assembly, on the 1998 Moldovan laws on local administration and on administrative and territorial organisation, the Venice Commission emphasised that, as follows from article 5 of the European Charter on Local Self-Government, no changes to the local administrative territorial division of the country should be made without prior consultation of the local communities concerned. The Commission furthermore recalled that the Republic of Moldova is a Contracting Party to the Framework Convention for the Protection of National Minorities, whose Article 16 lays down that: "the Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention". Without taking a stand on the concrete modalities of the administrative-territorial reform, the Commission called upon the Moldovan authorities to ensure that the rights of the Bulgarian minority are fully respected and not jeopardised by the implementation of the reform.

11. According to the information provided to the Venice Commission, the Public Administration Reform Strategy 2016-2020 of the Republic of Moldova indeed includes, among its specific objectives, the authorities' commitment to “develop the concept and a Road Map on the Administrative-Territorial Reform in the Republic of Moldova (including elimination of districts)”, aiming at establishing new administrative-territorial units, “whose authorities would be capable of providing high quality services to its inhabitants, ensuring, at the same time, local democracy based on the interests and preferences of stakeholders, on the universal values, such as human rights, gender equality and social inclusion”. According to the information provided to the Venice Commission, the strategy aims inter alia at implementing recommendations and expectations of the international partners of the country that the Republic of Moldova should build up a modern, efficient and more rationalized public administration, including through reforming the country's administrative territorial organisation. It seems that different concepts or models are being contemplated in this field, although at this stage the reform has yet to start.”

“29. Chapter III of the Law on the administrative-territorial organization stipulates that the creation and suppression of administrative-territorial units and potential changes to their boundaries may only be decided after prior consultation of citizens (article 17 (1)). Such consultation is also required for changing boundaries as a result of the necessity to transfer an administrative-territorial unit within another unit and for the transfer of the administrative centre of a unit.”

CDL-AD(2016)035, Republic of Moldova - Opinion on the Draft Law on the Ethno-Cultural Status of the District of Taraclia

“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, Georgia - Opinion on the Draft Constitutional Law on changes and amendments to the Constitution (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 1st 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, Armenia - Interim Opinion on Constitutional Reforms

IX. 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, Tunisia - Opinion on the Final Draft Constitution

“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 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, Ukraine - Opinion on the Draft Law of Ukraine amending the Constitution presented by the President of Ukraine

X. State of Emergency

“84. The draft law may also potentially affect the *vertical separation of powers*, between the national and local levels. North Macedonia is a unitary state; however, there are some constitutional guarantees for the local self-government bodies and for the ethnic communities not belonging to the majority. In particular, local self-government is regulated by a law adopted by a two-thirds' majority vote of the total number MPs, along with a “special majority” requirement. The laws on local finances, local elections, boundaries of the municipalities, and on the city of Skopje shall also be adopted by a “special majority”.

85. In principle, it is normal that the SoE regime entails a certain shift of competences from the local authorities to the central government. It is not entirely clear whether during the SoE some competencies may also be transferred in the opposite direction – in particular whether the central government may delegate to the local authorities the power to take certain decisions limiting fundamental rights and freedoms in the geographical area concerned, which in normal circumstances would belong to the central government. The Ministry of Justice argued that the decree-laws may affect the legislation on the local self-government and may provide for a temporary vertical transfer of some competencies, but this should be specified in the draft law more clearly.

86. The next question is whether the framework law on the SoE, which may *indirectly* have a bearing on the relationship between the local administrations and the central government, should be approved in the same way as the ordinary legislation on the local administration, finances, etc. The authorities argued that the qualified and the special majority requirements of the Constitution would not be applicable to the law on the SoE, because this law would not change the normal institutional structure of the local administrations. The Venice Commission reiterates its recommendation (see paragraph 27 above) that a law on the SoE should be adopted by a special majority. If the Constitution of North Macedonia may be interpreted as

allowing it, it should be done to ensure that the law gets support across political and ethnic lines.”

CDL-AD(2021)040, North Macedonia - Opinion on the Draft Law on the State of Emergency

“7. The Congress report also stated “of special concern for the Congress were the concrete impacts of the state-of-emergency measures on the local self-government in Turkey. Dozens of local elected Mayors and Councillors (mostly from the HDP) in more than fifty towns, especially in the south-east of the country, were placed in pre-trial detention on grounds of accusations of terrorist links and were replaced with trustees appointed by the central authorities.” According to the Congress report, “around 125,000 persons were not eligible to run in the local elections on grounds of having been dismissed from office by state-of-emergency decrees, mostly due to terrorism-related charges.”

“65. The Venice Commission has previously explained that according to Article 127 of the Turkish Constitution local administration organs are elected by the electorate, and that by replacing free elections by people with appointments made by state authorities (cf. Article 45, paragraph 1 of the Municipality Law as amended), Decree-Law N° 674 altered, in respect of the concerned local communities, “the very nature of local authorities as representative of the will and the choice of the local population, and the legitimacy of their action.” The above-mentioned lack of proportionality resulted in a breach of Article 3, paragraph 1 of the European Charter for Local Self-Government (ECLSG), as it undermined “the right and the ability” of elected local authorities, “to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population”.

66. In the present situation, all the aforementioned concerns are relevant since they are related to the legal provisions on which the decisions by the Ministry of the Interior of 19 August 2019 were based. While the Commission is not in a position to examine in detail the individual decisions taken, it is highly concerned that they were grounded on legislation whose adoption procedure and content seem not to have a sound basis in the Turkish Constitution and to conflict with international standards concerning the state of emergency (see in particular Article 15 of the ECHR) and local self-government. Several Articles of the ECLSG need to be mentioned here: in addition to Article 3, paragraph 1 already referred to above, in particular Article 3, paragraph 2 – according to which the rights of self-government must be exercised by democratically constituted authorities, Article 4, paragraph 4 – according to which “powers given to local authorities shall normally be full and exclusive” – and Article 7, paragraph 1 – according to which “the conditions of office of local elected representatives shall provide for free exercise of their functions”. As a result of all those concerns about the legal framework, the decisions by the Ministry of the Interior are also highly problematic with respect to the rule of law in terms of legality.”

“75. The decisions by the Ministry of the Interior are based on state of emergency-rooted legislation, which allows for replacement of elected mayors by government officials. They undermine the very nature of local self-government and should be repealed. The Commission also considers that it is a matter of grave concern that suspensions for an extended period of time can be based on allegations of terrorism-related offences which appear to be interpreted extremely broadly, *inter alia*, with regard to the offence of making propaganda for a terrorist organisation; such a broad interpretation was repeatedly considered by the European Court of Human Rights as going against the Convention. In the present cases, where most of the allegations had already been made before the candidacies for election had been validated, it needs to be ensured that the choice of the local population is respected. This could be achieved either by reinstating the suspended mayors or by other means such as determination of

replacement mayors by the elected municipal councils or by organising repeat elections in the electoral zones concerned.”

CDL-AD(2020)011, Türkiye - Opinion on the replacement of elected candidates and mayors

“96. The provisions pertaining to the functioning of local democracy in Decree Law N° 674 raise similar concerns, both in terms of compliance with the procedural and substantial rules on the state of emergency and with the local self-government principles enshrined in the European Charter of Local Self-Government, to which Turkey is a Party.

97. It is particularly worrying that, through emergency legislation, the central authorities are enabled, in the framework of the fight against terrorism, to appoint unelected mayors, vice-mayors and members of local councils, and exercise, without judicial control, discretionary control over the functioning of the concerned municipalities.

98. This is all the more problematic as the new rules, whose necessity appears doubtful even in the framework of the emergency regime, are introducing changes of structural nature, which are not limited in time, to the system of local government in place in Turkey, based on the election of local authorities by the local population.

99. The Venice Commission recalls that local authorities are one of the main foundations of a democratic society and their election by the local population is key to ensuring the people’s participation in the political process. Furthermore, the adequate implementation of the principles of local self-government is instrumental to ensuring a democratic, effective and responsible management of public affairs at the local level.

100. The Venice Commission, therefore, calls the Turkish authorities to:

- repeal the provisions introduced by the Decree Law N° 674 which are not strictly necessitated by the state of emergency, in particular concerning the rules enabling the filling of vacancies in the positions of mayor, vice-mayor, local council member, by the way of appointments;
- ensure that the application of the rules introduced by the Decree Law N° 674 is limited to the duration of the state of emergency, and that any permanent measures affecting local democracy are taken following the ordinary laws and procedures, after proper parliamentary debate;
- introduce provisions for adequate judicial review of the measures taken by the governorship in municipalities where special powers are instituted in their respect in the context of the fight against terrorism;
- provide adequate rules and framework for the reinstatement of suspended/dismissed local representatives in case the terrorism-related charges do not lead to a criminal conviction.”

CDL-AD(2019)021, Türkiye - Opinion on the Provisions of the Emergency Decree-Law N° 674 of 1 September 2016 which concern the exercise of Local Democracy

XI. Appendix

- [CDL-AD\(2022\)038](#), Ukraine - Urgent joint opinion of the Venice Commission and the OSCE/ODIHR on the draft law on local referendum
- [CDL-AD\(2022\)035](#), Belarus - Final Opinion on the Constitutional Reform
- [CDL-AD\(2022\)025](#), Republic of Moldova - Joint opinion on the draft electoral code
- [CDL-AD\(2022\)004](#), Chile - Opinion on the drafting and adoption of a new Constitution
- [CDL-AD\(2021\)038](#), Ukraine - Opinion on the draft law "On the Principles of State Policy of the Transition Period
- [CDL-AD\(2021\)040](#), North Macedonia - Opinion on the Draft Law on the State of Emergency
- [CDL-AD\(2021\)037](#), Albania - Amicus Curiae Brief on the competence of the Constitutional Court regarding the validity of the local elections held on 30 June 2019
- [CDL-AD\(2021\)029](#), Hungary - Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020
- [CDL-AD\(2021\)007](#), Kyrgyzstan - Joint Opinion of the OSCE/ODIHR and the Venice Commission on the Draft Constitution of the Kyrgyz Republic
- [CDL-AD\(2019\)021](#), Türkiye - Opinion on the Provisions of the Emergency Decree-Law N° 674 of 1 September 2016 which concern the exercise of Local Democracy
- [CDL-AD\(2019\)015](#), Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist
- [CDL-AD\(2019\)003](#), Luxembourg – Opinion on the proposed revision of the Constitution
- [CDL-AD\(2017\)025](#), Kyrgyzstan - Endorsed joint opinion on the draft law "on Introduction of amendments and changes to the Constitution"
- [CDL-AD\(2017\)021](#), Türkiye - Opinion on the Provisions of the Emergency Decree-Law N° 674 of 1 September 2016 which concern the exercise of Local Democracy
- [CDL-AD\(2017\)010](#), Kazakhstan - Opinion on the amendments to the Constitution
- [CDL-AD\(2016\)025](#), Kyrgyzstan - Endorsed joint opinion on the draft law "on Introduction of amendments and changes to the Constitution"
- [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
- [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

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

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[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)

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[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

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