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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

COMMENTS

**ON THE PRELIMINARY DRAFT CONSTITUTION OF UKRAINE
(doc. CDL (95) 28)**

**PART VI
TERRITORIAL SYSTEM AND TERRITORIAL ORGANISATION
OF THE POWERS**

by
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Draft Constitution of Ukraine - Preliminary partial draft
Remarks prepared by prof. SERGIO BARTOLE, University of TRIESTE, on
the part dealing with " territorial system and territorial organisa-
tion of the power " .

1. The two articles which open the section of the preliminary par-
tial draft concerning the territorial system offer a design of the
territorial organization of the power in Ukraine which needs some
clarifications.

First of all the definition of the autonomy which is given to the
Republic of Crimea and to the local self-government is apparently
the same. The draft uses the expression " administrative - and -
territorial autonomy ". This expression can look misleading. It re-
fers to the space dimension of the autonomy which is territorial:
all the entities of the local government have a competence which is
referred to a territorial space. Therefore this is a common feature,
but we cannot say the same with regard to the content of the auton-
omy. The draft uses the expression " administrative autonomy " while
the autonomous Republic of Crimea differs from the other entities of
the local government because it has legislative functions and is al-
lowed to participate in the adoption of its own constitution. It
would be advisable distinguishing the autonomy of Crimea from the
general and common autonomy of the local government.

The draft does not deal with the problem of the identification of
the territorial borders of the local government entities: is this
task entrusted to the parliamentary law when the draft says that "
regional area and zone territorial entities may be established wit-
hin the State territory in accordance with the laws of Ukraine " ?
The meaning of this provision, or - perhaps - of its translation is
not sufficiently clear. And what about the participation of the peo-
ple concerned in drafting the borders of the local self-government ?
The role of the constitution of the autonomous Republic of the Cri-
mea is obviously pivotal. Shall it identify the powers and the sphe-
re of the competences of the autonomous Republic ? Or is this task

entrusted to the constitutional law of Ukraine on the autonomous Republic of the Crimea ? If this last interpretation is correct, the constitutional position of the autonomous Republic is more similar to that of the Italian ordinary Regions than to that of the Spanish Regions.

According to the fifth article of this part of the draft the laws adopted by the autonomous Republic of Crimea shall have to comply with (inter alia) the " principles laid down in other laws of Ukraine ", but in the same article the Supreme Rada of Crimea is allowed to " suspend the operation of, or repeal, laws and other legislative acts of the autonomous Republic of the Crimea whenever they are incompatible with the constitution and laws of Ukraine ". Is the suspension allowed when the crimean acts don't comply with all the content of the ukrainian laws or with the principles of the ukrainian laws only ? If the limit of the crimean legislation is given by all the content of the ukrainian laws, the competence of the ukrainian and crimean laws are supposed to be overlapping and the crimean laws are completely subordinate to those of Ukraine with the consequent narrowing of the autonomy of the Republic. The point deserves a clarification also with regard to the power of repealing the crimean acts incompatible with the constitution and laws of Ukraine which is entrusted to the President of Ukraine.

Are the " taxes and charges " of the Republic of Crimea completely " specified by the laws of Ukraine ", or have these laws to leave some freedom of decision to the crimean legislator in the matter ? If the crimean autonomy has to be guaranteed in this field also, the second solution shall be advisable.

A last point concerning Crimea: is the autonomous Republic (as well the German Laender) entrusted with all the administrative functions in Crimea, or are its administrative functions restricted to the execution of the crimean legislation only, while the ukrainian administrative bodies have to provide for the execution of the ukrainian laws in Crimea too ?

2. The design of the local government is really complex, not only with regard to the membership of the different Radas but also with regard to the relations between the Radas and the relative executive bodies.

According to the first alternative, regional and district Radas " shall be composed of " the representatives, or rather the chairmen of the Radas of the inferior levels of local government, whose members and chairmen are directly elected by the citizens. But also the chairmen of the regional and district Radas shall be elected by the citizens. Because the election of the members of the regional and district Radas goes alongside a track different from that of the election of the chairmen of those bodies, and the chairmen are at the same time the heads of the relative executive bodies, the existence of a governmental majority in the regional and district Radas looks uncertain and the stability of the executives are put in danger. Only the existence of a single party regime with a very centralized party organization would avoid possible inconveniences.

Therefore it would be advisable to adopt the second alternative, which allows the simultaneous (and - hopefully - coherent) election of the members and the chairmen of the inferior levels of the local government, and the election of the chairmen of the regional and district Radas (who are the heads of the executive bodies too) by the Radas themselves according to the political preferences of their members who are partially elected by the inferior Radas and partially by the citizens directly.

The autonomy of the local government entities looks very weak if we keep in mind that the election of the chairmen of the regional executive bodies depends " on the recommendation " of the Cabinet of Ministers of Ukraine and upon agreement with the President of Ukraine". Isn't there the possibility of having regional chairmen who don't share the political position of the central bodies of government ? Also the election of the district chairman " on the recommendation of the chairman of the regional Rada's executive body " looks objectionable.

It is not clear whether all the administrative activities at the local level are entrusted to the local self-government entities. According to the last chapter of the draft, this is not apparently the case, but the fourth article of the chapter on local self-government conveys a different design. Which is the solution adopted by the draft? Is the task of the ukrainian law establishing the competences of the local government with regard to those of the State authorities? Which are the criteria which the law has to comply with in this matter? The provisions of the third article of the chapter on local self-government are not very clear. In any case the last article providing for general principles to be established by ukrainian laws in the field of the local government, apparently leaves a free space to the autonomy of the self-government entities. If the national laws were allowed to adopt detailed rules (and not only general principles), the autonomy of the self-government would be restricted by specific rules which did not leave freedom of choice and decision to villages, towns, cities, districts and regions. There is a difference between the provisions (in the chapter on local self-government) on the suspension and repeal of the local self-government acts which are illegitimate and those of the third article of the last chapter providing for the " recourse to the court " against the same acts. It would be advisable to unify and coordinate these rules.

3. The extension of the powers of the State (governmental) plenipotentiaries (counsellors) looks too large. The provisions of the second article of the last chapter are drafted in such a way that there isn't any difference between the powers dealing with public institutions, enterprises and organizations and those concerning private organizations, enterprises and institutions. My guess is that they have to be differentiated, also with regard to the distinction between State authorities and local self-government entities.