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OBSERVATIONS

**ON THE DRAFT NATIONAL STRATEGY
ON THE REFORM
OF THE TERRITORIAL ORGANIZATION SYSTEM
OF THE AUTHORITIES**

IN UKRAINE

by:

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I. GENERAL REMARKS. OVERVIEW OF THE CONTEXT IN WHICH THE NATIONAL STRATEGY WAS DRAWN UP

1. First of all it should be mentioned that in the opinion on the provisions concerning the organisation and status of local and regional authorities under the new constitution of Ukraine, presented by Mr Alain Delcamp (Strasbourg, 16 April 1996, doc. CDL(1996)079e-restr), it was concluded that the provisions of the Ukrainian Constitution on local and regional authorities seem generally to comply with the principles defended by the Council of Europe, particularly in the European Charter of Local Self-Government. Mr Alain Delcamp pointed out that we should pay particular attention to the manner in which the provisions on the independent powers of the various decentralised bodies and those relating with finances are developed and implemented in the Local Government Act, as this act will be particularly crucial in terms of enabling the various councils to organise their administrative and decision-making structures in conformity with local realities.

2. On 24.4.1998 Ukraine ratified the European Charter of Local Self-Government – the first multilateral legal instrument to define and safeguard the principles of local autonomy, one of the pillars of democracy. It is important to mention that the formulation of the principles of local self-government laid down in Part I of the Charter had to try to reconcile the wide diversity of legal systems and local government structures existing in the member states of the Council of Europe. Nevertheless, it was recognised that individual governments may still face constitutional or practical impediments to subscribing to particular provisions of the Charter, therefore the Charter (article 12) provides for “compulsory nucleus” system, which means that the Parties to the Charter are required to subscribe to at least 20 of 30 paragraphs of the Part I, including at least 10 from a nucleus of 14 basic principles. Most European “old” democratic countries accepted to be bound by the Charter in its entirety, most Central-Eastern European countries considered themselves bound by certain provisions of the Charter (for example, Armenia, Azerbaijan, Croatia, Czech Republic, Georgia, Latvia, Slovakia), and Ukraine made no declarations or reservations, and it means that Ukraine is bound by the Charter in its entirety.

Besides, on 21.9.1993 Ukraine has also ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, and later on – the Additional Protocol and Protocol No. 2 to that Convention (4.11.2004).

3. According to the Constitution of Ukraine, the three-level system of local self-government is created in Ukraine. The “real” local self-government is to be associated with the right of first level territorial units – residents of a village or a voluntary association of residents of several villages into one village community, residents of a settlement, and of a city - to independently resolve issues of local character within the limits of the Constitution and the laws of Ukraine (1 and 3 paragraphs of the article 140 of the Constitution of Ukraine). The second level of self-government is districts and the third – oblast. According to the Constitution, district and oblast councils are bodies of local self-government that represent the common interests of territorial communities of villages, settlements and cities; the chairman of a district council and the chairman of an oblast council are elected by the respective council and lead the executive staff of the council (4 paragraph, article 140 and 4 paragraph, article 141).

The background of the authority of corresponding levels of self-government is defined in the article 143 of the Constitution of Ukraine (1 and 2 paragraphs): “Territorial communities of a village, settlement and city, directly or through the bodies of local self-government established by them, manage the property that is in communal ownership; approve programmes of socio-economic and cultural development, and control their implementation; approve budgets of the respective administrative and territorial units, and control their implementation; establish local taxes and levies in accordance with the law; ensure the holding of local referendums and the implementation of their results; establish, reorganise and liquidate communal enterprises, organisations and institutions, and also exercise control over their activity; resolve other issues of local importance ascribed to their competence by law.

Oblast and district councils approve programmes for socio-economic and cultural development of the respective oblasts and districts, and control their implementation; approve district and oblast budgets that are formed from the funds of the state budget for their appropriate distribution among territorial communities or for the implementation of joint projects, and from the funds drawn on the basis of agreement from local budgets for the realisation of joint socio-economic and cultural programmes, and control their implementation; resolve other issues ascribed to their competence by law.”

4. It should be mentioned also that the second and third levels of the self-government are also treated as regions, through which the decentralisation of state power is implemented and the balanced social-economic development of various territorial levels is ensured: “The territorial structure of Ukraine is based on the principles of unity and indivisibility of the state territory, the combination of centralisation and decentralisation in the exercise of state power, and the balanced socio-economic development of regions that takes into account their historical, economic, ecological, geographical and demographic characteristics, and ethnic and cultural traditions” (article 132 of the Constitution of Ukraine).

5. The National Strategy was drawn up in the context of the wider political reform, which includes the “qualitative reform of the system of the authorities both on state and regional and local levels”. The current situation in Ukraine is (in wording of the National Strategy) “the situation of state building”, with the substantial constitutional reform, foreseen in the near future, including the reform of the system of local authorities. The problem is that in Ukraine there are plans to pursue several substantial reforms at one time. Because of this situation there could arise a question about the quality and proper implementation of the state reforms. Nevertheless, the willingness of Ukraine to solve current problems of the status of local authorities is creditable.

6. Another important factor is the need of political consensus concerning the reform of local authorities system in Ukraine, especially after the last election of the President of Ukraine. As far as we know, besides the draft National Strategy we are analysing here, there are several similar national initiatives concerning the reform of local self-government: for example, on 8 December 2004 the Parliament of Ukraine has preliminary adopted and submitted for approval of the Constitutional Court of Ukraine the Draft Law on introducing changes on local self-government to the Constitution of Ukraine, which provides for substantial changes in the role of local state administrations. Because of the radical nature of some changes foreseen, it is assumed that the approval of that Draft Law in its present form is quite difficult task¹. Another initiative is

¹ Source: <http://www.eru.org.ua>

the Draft Law on the Fundamentals of Stimulating Regional Development, which is adopted as a draft law (in the first reading) on 19 June 2003 and at the moment it is considered at the respective Parliamentary Committees²; there are also some talks about the National Strategy for Regional Development 2003-2011 - but its legal status is not clear, - and some other concepts (some of them are even mentioned in the National Strategy, for example, the Concept of state regional policy, the Concept of stable development of the localities, the Concept of administrative reform in Ukraine).

7. One more important factor identifying the need for the reform of territorial administrative structure of Ukraine is quite high number of the decisions of the Constitutional Court of Ukraine concerning the Law on Local Self-Government – 10 decisions during 5 current years. One of the decisions – that of 13.7.2001 – was adopted by the Constitutional Court in the case concerning the demand of the group of the national deputies to provide the official interpretation of the terms “rayon” (district) and “rayons of the cities” (districts of the cities), “organisation of the government of rayons in local entities” and “territorial structure of Ukraine” in the light of corresponding constitutional provisions. In its decision of 13.07.2001 the Constitutional Court of Ukraine provided the following official interpretation of these terms³: the term “rayon” means the administrative-territorial entity within the system of administrative-territorial structure of Ukraine; the legal status of “rayon” is described by the laws. The term “organisation of the government of rayons in local entities” means the authority (competence) of the councils (“rada”) of cities as institutions of local self-government in the cities, which are divided into rayons, to make decisions concerning the supply of material-financial and organisational means for the implementation of local self-government in the rayons of cities; concerning the creation or not of councils (“radas”) of these rayons as well as description of their competence; concerning the administrative-territorial structure and other questions within the scope and order provided by the Constitution and laws of Ukraine. The Constitutional Court of Ukraine has also interpreted that the meaning of “the territorial structure of Ukraine”, its substance, the legal status and types of administrative-territorial entities, the competencies of institutions concerning the resolution of questions on administrative-territorial structure of Ukraine are the questions of state interest and significance, therefore these questions might be solved by the laws only. Nevertheless some competencies in these fields may be delegated by law to the institutions of local self-government (article 143 of the Constitution of Ukraine). Concerning the scope of competencies of the councils of villages, settlements and cities in the field of questions of administrative-territorial structure, the Constitutional Court of Ukraine explained that the resolution of the given questions is not attributed exclusively to the powers of the state bodies and can be carried out by the councils of villages, settlements and cities within the scope and the order, provided by the Law on Self-Government and other laws of Ukraine. The Constitutional Court has also outlined that the scope of these competencies of the councils of cities are not detailed enough.

8. Another very important question that Ukraine has to solve as soon as possible is the sharp disparities between the various regions of Ukraine. It is clear that Ukraine has to balance the state regional policy and local initiatives of strengthening the local self-government system and structure in order to ensure the stability of unitary state and the rights of local self-government.

² Source: <http://gska2.rada.gov.ua>

³ Source: <http://www.ccu.gov.ua/pls/wccu/P000?lang=0>

All these factors and problems require the sound political consensus. Having in mind the changing political situation in Ukraine, the necessary steps in moving towards consolidation of the democracy, new President of the State and very high expectations of the Ukrainian people to see the concrete and obvious changes as well as sound improvement of their lives as soon as possible, we face the question about the willingness of the new highest officials of Ukraine to adopt *this* National Strategy as well as to pursue various important reforms at the same time. Nevertheless we welcome the National Strategy as very important step to improve the implementation of the right to local self-government.

II. COMMENTS ON THE NATIONAL STRATEGY

1. The introduction reveals the concept of the authors of the National Strategy, their incentives, the problems to be solved and the legal basis of the Strategy.

There are some important points to be mentioned. First of all – the legal basis of the Strategy: it is stated that “the National Strategy is prepared taking into account the Concept of state regional policy, the Concept of stable development of the localities, the Concept of administrative reform in Ukraine, as well as other legal acts, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine”. It is strange, but nor Constitution, neither international legal acts (like the European Charter of Local Self-Government) are mentioned as a legal basis of the National Strategy.

2. Another question is the place of democratic values and the rule of law as the background of the National Strategy. It should be mentioned that the basic premises underlying the European Charter of Local Self-Government are provided in the preamble of the Charter. The most important principles are: the vital contribution of local self-government to *democracy*, the right of citizens to participate in the management of public affairs as one of the principles of the *democracy* and the need for local authorities to be *democratically* constituted. In the entire National Strategy the word “democracy” is mentioned only three times – one in describing the process of building Ukraine as a democratic state, one – in the term of “State support and guaranteeing of local self-government” (where it is provided that the aim of the promotion of development of local self-government is the strengthening of democratic grounds of the society organization) and one – between the main steps in strategy implementation, in the same field of “State support and guaranteeing of local self-government” (it is provided that “citizen participation in local and regional self-governance [...] could stimulate the development of local democracy”).

It shows that too much emphasis is given to the structures, the institutions, the improvement of structures, the creation of new structures and institutions, the interests of state and local institutions, the powerfulness of the state, with lack of attention to the democratic values, the rule of law and the protection of human rights, for example, it is provided that “the state can be *powerful* only if there are *strong* regions”, “the improvement of *power relations* on the level of oblast, rayon, city, town and villages”, “improvement of the *state administration system* in centralisation and decentralisation issues”, “the problems can be solved [...] by combination of *institutional changes in the public authorities system* with the reform of administrative territorial structure of Ukraine”. Even the right to the local self-government is mostly called “territorial power organization on local levels”. It should be mentioned that neither the rule of law, nor the separation of powers and decentralisation are self-purposed. Their meaning is revealed only by the protection of human rights, ensuring of social concord and the legal solution of the conflicts arising in the society.

3. Another important question is that the problems that Ukraine is facing in the field of *“territorial power organization on local levels”* are recognised, but not clearly identified, for example, *“the current situation requires qualitative reform”*, *“permanent experiments on reforming of the institutes of territorial power organization on local levels [...] haven’t shown the desired results”*, *“the imperfect current legislation”*, *“the contradictory and ineffective territorial authority structure”*, *“the existing shortcomings in territorial authority organisation and development of regions”*. It presupposes that there are so many problems and the context in which the reform should be pursued is so complicated that it is hard to identify precisely the concrete aims and tasks of the reform. Therefore it is not a good perspective having in mind other important reforms that Ukraine is attempting to implement in other fields of state policy; from the other side it shows that Ukraine does not have the concrete idea and perception of overall process of the reform (it wants to reform the entire system, starting from the political and legal backgrounds), it is not sure about the results of the reform to be achieved, especially having in mind the above mentioned reforms in other policy fields.

4. In analysing the “General terms” of the National Strategy, it should be mentioned, that a lot of attention is given to the so-called “science-based”, i.e. methodological grounds of the reform. Therefore the exhaustive list of various terms, concepts, notions and principles are provided in the Part I (General terms) of the National Strategy. These concepts and notions are well formulated, following the “classic” notions of the political science and public administration and tailored for the specific situation in Ukraine. However very wide range and long list of these conceptual instruments show that the scope of the National Strategy is very wide (maybe even too wide). The main problem is that the reform of territorial-administrative structure of Ukraine combines two different policy fields: the reform of local self-government and the reform of regional policy. These two fields are of different legal origin and purpose (local self-government is the right of citizens to participate in the management of public affairs and it is one of the principles of the democracy, while the regional policy is one of the state policies, its aim is to protect state interests, to supervise the local authorities), and they has to be clearly separated, as otherwise the reform of territorial-administrative structure will hardly be possible and will hardly meet the standards of European Council in the field of local self-government. These two fields are crossing each other in the entire National Strategy, and one could say it is the most important shortcoming of the Strategy. It is provided that *“the main purpose of the National Strategy – is the creation of more rational and effective system of public authorities in administrative territorial units, able to guarantee the highest social human value, to form optimal circumstances for human development, ensure complex and stable development of all regions by means of the fullest usage of their potential. The independent, efficient local self-government on all levels of administrative territorial structure of Ukraine should be a necessary element of such system”*. Some strategic priorities of the National Strategy, i.e., *“to resume the control for a situation and development dynamic of regions”* and *“to form the effective system of local and regional self-government according to the standards of the Council of Europe”* are quite conflicting with regard to their implementation. Ukraine should clearly identify these different fields and should provide different legal mechanisms for the solution of the problems in these two different fields. Of course they could appear in the same document, especially when we are talking about the reform of state's territorial-administrative structure, but the questions of local self-government and regional policy should be dealt differently.

5. The Basic Directions and Tasks of National Strategy (point 1.4) confirm very wide scope of the National Strategy and the complexity of problems to be solved. It is stated that *“the insurance of stable local and regional development, real organizational and financial*

independence of territorial communities, bringing them closer to the European standards requires complex settling of the tasks". The main tasks are also enumerated, and they seem corresponding to some principles of the European Charter of Local Self-Government, for example, *"improvement of mechanisms of realization of the rights and freedom of the person and the citizen on territorial level"*, *"increasing the responsibility of public officers of state authorities and local self-government"*, *"reforming system of granting of administrative, management and social services"*, *"reduction of administrative regulation and organization of supervising functions of the state authorities"*. Nevertheless, there is a lack of emphasis for some other very important European standards of local self-government, notably that the main principles of local self-government should be enshrined in written law (that is, any attempts to reform the territorial-administrative structure and to improve the local self-government first of all should be enshrined in corresponding laws), that the state legislation should clearly assign certain responsibilities to specific levels of authority (in the Basic Directions of the National Strategy the emphasis is made only on the *"distinguishing of functions and competencies on territorial development issues"*) and that the local authorities should have individual financial resources, which have to be adequate to the level of their responsibilities (to compare, one of the main tasks, enumerated in the Basic Directions of the National Strategy, is the *"creation of conditions for appropriate resource support of performance of local self-government tasks and functions"* – but it seems that the meaning of this task is the "state support" for the implementation of responsibilities of local authorities, not individual, separate, clearly and transparently identified budget). It should be noted that improvement of public administration on the regional, rayon and local levels, the reform of the system of public services and the improvement of local self-government systems, that Ukraine aims to do, are impossible without clear attribution of competencies as well as sound and transparent financial background.

6. In analysing the "Main Steps in Strategy Implementation" we should note that the main steps in the strategy implementation (point 2) comprise the concrete actions to be taken in realisation of the Basic Directions and Tasks. It should be mentioned again, that the exhaustive lists of the main steps reflect the wide scope and complexity of the Basic Directions and Tasks. For example, the main steps in *"improvement of the terms for realization of human and civil rights on the territorial level"* (point 2.1) at the same time comprises some general aspects (*"to create necessary conditions for realization of constitutional human and civil rights on territorial level"*), then the creation of dialogue with various state institutions and the society (*"to set partnership relations between higher, central state authorities and local self-government structures"*, *"to introduce open consultations with representatives of public institutes"*, *"to hold public hearings"*), then suddenly these steps touch some aspects of state social policy (*"to follow minimal standards of social protection of population"*) and finally they comprise analytical work (*"identification of the reasons, which prevent realization of constitutional civil and human rights"*, *"to perform careful check, analysis of all civil cases concerning the work shortcomings of state authorities"*, *"to generalize and analyze existing conditions of realization of constitutional human and civil rights"*). The same situation is with other steps of strategy implementation. It seems that Ukraine is trying to solve all the questions at one time. Moreover, these questions are not classified; they are too complicated and too wide to be solved at one time. It is hard to comment these steps as there is no basic concept, clear idea nor methodology for the solution of concrete problems: all the separate steps are welcome and well formulated (for example, *"to demarcate competencies between public authorities on local levels on the basis of subsidiarity"* (point 2.2.), *"to improve the mechanisms of responsibility of civil servants of local self-government, to a territorial community and the state"* (point 2.5) or *"to ensure financial independence of local authorities"* (point 2.7)) but it is hard to understand their entirety, the basic concept, especially because some propositions are quite controversial (for

example, “to set parity relationships between state authorities and local self-government system” (point 2.2), “to combine state regulation of regional development with increasing of the role and responsibility of local public authorities for implementation of regional policy” (point 2.4), “to improve the control for realization of delegated competencies by regional and local self-government bodies” (point 2.5), “to determine legislatively the role of territorial communities in the systems of local and regional self-government” (point 2.5), “to increase the effectiveness of the state financial control” and “to introduce new forms and methods of financial control” (point 2.7). The priorities of the concrete steps are also doubtful and not always comprehensible, for example, in the point 2.1 “Improvement of the terms for realization of human and civil rights on the territorial level” the first steps (we assume that the place of the measure on the list corresponds to its importance) are “to create necessary conditions for the realization of constitutional human and civil rights on territorial level” and the “creation of partnership relations between the different levels of authorities”; “the identification and elimination of reasons, which prevent realization of constitutional rights” are somewhere in the middle of list, whereas the “analysis of the existing conditions of realization of constitutional rights” is almost at the end. In the point 2.2 “Insurance of the effectiveness of the territorial organization system of public authorities” in the first place the creation of several new central executive bodies is foreseen, and only in the middle of the list of main steps – the redistribution of “competences between public authorities on local levels on the basis of subsidiarity; redistribution of responsibilities between local self-government bodies and local state executive authorities”. In the point 2.3 the first step is to create a new administrative territorial structure, and only then “to identify the criteria of the formation of administrative territorial units”. The point 2.6 “Legal, methodical and informational support of the reform of the territorial organization of the authorities” should be in the beginning of the groups of main steps, not in the end. And its importance is much higher (in fact it is dedicated for the description of legal basis and legislative instruments that are the main precondition for the reform) than just “a support” of the reform.

The substance of the point 2.9 “Material support of the reform of the territorial organization of the authorities” in fact is not a material support for the reform, but rather the description of state economic policy in the regions.

7. Therefore the systems of the main steps of strategy implementation should be better organised and substantiated; one of possible examples of the list of steps is the very European Charter of Local Self-Government, that is, the legal reasoning and basis of the strategy, the identification of problems to be solved, then the concepts of local self-government and regional policy, the clear distribution of competencies between various levels of government, the administrative control over the local self-government and its limits, the appropriate financial independence of local authorities and other provisions.

8. Besides, having in mind the complexity of the reform, not only steps, but also the *detailed stages* of the implementation should be provided in the National Strategy. The Stages of Strategy Implementation (point 3) are obviously too general to understand and to evaluate the forecasted progress of the implementation of the National Strategy.

9. In general we can say that in the National Strategy there are meritorious attempts to provide a conception of the reform and improvement of the local self-government system in conformity with the standards of the European Charter of Local Self-Government. The main “European standards” are more or less present in the National Strategy, that is, the constitutional and legal background of the local self-government, the detailed conception of local self-government, the

competencies and responsibilities of local authorities, the question of the delimitation of territorial entities and their protection, the improvement of the administrative structure of local authorities, the financial resources of the local self-government bodies, the administrative monitoring of the activities of local authorities etc. Nevertheless, as it was mentioned above, because of quite complicated and hard structure of the National Strategy, some topics are dealt within several “main steps of strategy implementation”, for example, the delimitation of competencies of local and regional self-government bodies is mentioned in almost all main steps. Moreover, in trying to tailor these European standards to the particularities of national system, Ukraine complemented these standards with incompatible ideas, for example, even if Ukraine aims to “*introduce valid local self-government on territorial level*”, “*to eliminate competition of competences of local state administrations and local self-government bodies*”, “*to set parity relationship between state authorities and local self-government system*”, in the same time there are intentions “*to improve control for realization of delegated competencies by regional and local self-government bodies*”, “*to substantiate the principles of state stimulation of regional development*”, “*to perform systematic monitoring of activity of territorial authorities*”; the same problem is in the field of the appropriate financial resources of local authorities: the National Strategy provides “*the development of new financial economic basis of functioning of local authorities*” and “*ensurance of financial independence of local authorities*” and in the same time – “*to increase the effectiveness of the state financial control*”, “*to introduce new forms and methods of financial control*” and “*to provide adequate state support*”.

However these attempts to reform highly centralised system in Ukraine are very welcome: if the National Strategy would be better structured, would have clear legal basis and perception of the reform, with the concrete problems identified and the concrete, not contradictable ways to solve it, and if the fields of local self-government and regional policy will be clearly separated, it will provide a strong point of depart for the creation of important legal and ideological background for the reorganisation of both local self-government and regional policy. These changes are very important to ensure that the present National Strategy would not become just one of the “permanent experiments” to reform the territorial power organisation on local levels.

III. COMMENTS ON THE APPENDICES TO THE NATIONAL STRATEGY

1. It should be mentioned that in the National Strategy there is also foreseen the creation of complicated, lumpy, very bureaucratic system for the public administration in the fields of regional policy and the administrative monitoring of the local self-government. As far as we understand, at the moment there is no institution in Ukraine, directly responsible for the regional policy. Most probably this lack of regulation and the problems that Ukraine is facing with the regional development of the country and the implementation of the right to local self-government forced the authors of the National Strategy to provide for the creation of very wide and complicated system with institutions having almost unlimited, versatile competencies in these fields. Moreover, it seems that because of this lack of regulation Ukraine moved to another extremity – it is planned to provide for at least some competencies in the field of regulation of these questions of regional development and local self-government to all institutions of executive power: to the new, specific ministry and the wide network of powerful agencies, which are responsible to the ministry, as well as to the President and certain newly created advisory institutions, which are responsible to the President. All the institutions are interconnected, but the most important are the Ministry and the Regional agencies of the territorial development.

2. The Ministry of Territorial Development (Appendix No. 1)

First of all we would like to make some comments concerning the constitutional and legal background of the competencies of Ministry.

In the article 7 of the Constitution of Ukraine it is stated that “In Ukraine, local self-government is recognised and guaranteed”. In the article 85 the authority of the Verkhovna Rada of Ukraine is defined, which *inter alia* comprises adopting laws, determining the principles of domestic and foreign policy, approving national programmes of economic, scientific and technical, social, national and cultural development, and the protection of the environment, establishing and abolishing districts, establishing and altering the boundaries of districts and cities, assigning inhabited localities to the category of cities, naming and renaming inhabited localities and districts, designating regular and special elections to bodies of local self-government. Article 92 states, that some questions are determined exclusively by the laws of Ukraine, for example, the territorial structure of Ukraine; the principles of local self-government; the status of the capital of Ukraine; the special status of other cities.

According to the article 116 of the Constitution of Ukraine it is the Cabinet of Ministers, who ensures the state sovereignty and economic independence of Ukraine, the implementation of domestic and foreign policy of the State, the execution of the Constitution and the laws of Ukraine, and the acts of the President of Ukraine; ensures the implementation of financial, pricing, investment and taxation policy; the policy in the spheres of labour and employment of the population, social security, education, science and culture, environmental protection, ecological safety and the utilisation of nature; elaborates and implements national programmes of economic, scientific and technical, and social and cultural development of Ukraine etc. Therefore the Constitution provides for the Government various powers in the domestic policy of the State. Even though the regional policy is not expressly mentioned, it should be concluded, that the Government has constitutional authority to solve regional questions. These provisions, especially the power to implement the domestic policy of the state, provide the sufficient legal basis for the creation of new ministry, responsible for territorial development. But the competencies of the Ministry should be defined very carefully, in order to do not interfere with the competencies of the Verkhovna Rada of Ukraine and with the right of territorial communities to the local self-government, especially having in mind the article 146 of the Constitution of Ukraine, that the issues of the organisation of local self-government, the formation, operation and responsibility of the bodies of local self-government, are determined by law.

3. The Draft regulation on the Ministry of the territorial development of Ukraine provides quite exhaustive list of the Ministry’s tasks and very large list of competencies and rights. As it was mentioned above, because of present lack of regulation in the field of regional policy and territorial development, it seems that by creating complicated and large system of institutions, responsible for the regional policy and territorial development, Ukraine is trying to solve all the questions and problems at one time. Another already mentioned shortcoming is that these problems are recognised, but not clearly identified nor classified.

4. There could be some doubts about the Ministry’s scope of authority, especially because regional policy and local self-government issues are not separated, for example, the main tasks of the Ministry comprise “*improving the work of the state authorities and local self-government*”

bodies, increasing the effectiveness of management decisions”; it *“coordinates the activity of central and local executive authorities in the state policy of the regional development and local self-government support”*, *“organizes partnership of government structures with local self-government bodies regarding development of proper territorial communities, regional and rayon communities”*; it has the right *“to conduct checks within its competency in local executive authorities”*. It should be mentioned, that the European Charter of Local Self-Government (article 8) provides that *“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; 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”*.

5. It also seems that the tasks and rights of the Ministry touch some external questions, even though they are related with the regional policy, for example, *“reinforcement of the market transformation processes; “encouraging implementation of the main principles of the state policy on attracting and effective usage of foreign investments”*; *“participating in formation and realization of the state policy in the sphere of cooperation with foreign and regional organizations”*; *“promoting development of enterprise, attraction of investments”*; *“encouraging creation of conditions for forming the national training system on regional development”*; the Ministry also *“develops mechanisms of demarcation of responsibility for providing the population with services between different levels of public authorities”*; *“ensures realization of the state foreign-economic policy”* etc. There could be some doubts whether such wide competencies are not conflicting with the authority of the Verkhovna Rada as well as with responsibilities of other ministries, like the Ministry of Foreign Affairs, the Ministry of Economy, the Ministry of Social Affairs, even the Ministry of Culture and Education.

6. Therefore the powers of Ministry in the field of regional policy and in support of local self-government should be clearly defined and separated according the principles of the European Charter of Local Self-Government, otherwise these provisions, which do not provide the exact limits of authority, would allow the Ministry to interfere into the activities of local self-government or even to violate its independence as well as to interfere into the activities of other state institutions. We also have serious doubts about the ability of the new institution to solve such long list of issues, to implement all these functions and tasks, especially because most functions are too general and wide to be implemented correctly.

7. Because of such wide authority of the Ministry we could also pose the question about the compatibility of such regulation with the basic principles of the National Strategy, that is, the subsidiarity, the decentralisation and the deconcentration. We are not sure whether such powers of the Ministry like, for example, *“improving the work of the state authorities and local self-government bodies, increasing the effectiveness of management decisions”* or *“conducting checks within its competency in local executive authorities”* really complements the realisation of the above mentioned principles.

8. Regional Agencies of the Territorial Development (Appendix No. 2)

In the National Strategy (appendix 2) it is stated that the Regional agency of territorial development is the territorial body of the Ministry of territorial development of Ukraine, accountable to it and under its control. Agency within its competencies provides

implementation of the state policy in the sphere of regional development and local self-government support.

Therefore we could provide the same comments, as provided in the part III.2 of the present document. Moreover, the functions of regional agencies should be defined in such way as to avoid the duplication of the Ministry's powers and, consequently, to avoid stronger centralization and control over local self-government.

9. Regional agencies should be created in the existing biggest regions, i.e. in the Autonomous Republic of Crimea, 24 districts and 2 cities, having special status (Kyiv and Sevastopol). These agencies are territorial bodies of the Ministry; their main task is to realize the state policy on regional development and local self-government support. From the other side, these agencies are subordinated to the oblast state administrations, as their activities are "coordinated by the chairman of oblast (city) state administration within his (her) competence in the sphere of regulation of relations on regional development and local self-government support" (point 6).

10. The National Council of the Territorial Development of Ukraine (Appendix No. 3)

The national council of the territorial development of Ukraine is a consultation-advisory body at the President of Ukraine; the Administration of the President of Ukraine provides financial and material-technical support to the activity of the National Council.

11. In the article 102 of the Constitution of Ukraine it is stated that the President of Ukraine is the Head of State; he is the guarantor of state sovereignty and territorial indivisibility of Ukraine, the observance of the Constitution of Ukraine and human and citizens' rights and freedoms. In the article 106 the authority and competencies of the President of Ukraine are defined. The President *inter alia* ensures state independence, national security and the legal succession of the state, administers the foreign political activity of the State, appoints and dismisses various high officials of the state, confers state awards, signs laws adopted by the Verkhovna Rada of Ukraine, has the right to veto laws adopted by the Verkhovna Rada etc. It should be mentioned, that there are no special provisions concerning the exact powers of President in the internal politics of the state, including regional policy. As it was mentioned before, the Constitution provides for the Government various powers in the domestic policy of the State. Therefore we have the doubt whether the idea to assign some institutions, which are responsible for the solution of the regional policy issues, to the competence of the President of the State is compatible with the Constitution. This is why the legal status and background of the National council of the territorial development of Ukraine, which is a consultation-advisory body at the President of Ukraine, should be better discussed and defined.

12. So the National Council is the governmental institution, the main tasks of which are to provide mostly consultative-analytical services: "to develop propositions on the reform", "to evaluate current situation", "to analyse [...] programs" etc. It should be mentioned that the main tasks of the Ministry and Regional Agencies of the Territorial Development also comprise the proposals for the reform of state's regional policy, the analysis of the implementation of corresponding legal acts, the analysis of the situation in the regions, the forecasts and planning of social-economic development etc. Therefore we raise a question whether Ukraine really needs such a bureaucratic system, the different components of which should perform the same functions.

13. There are also some doubts whether the National council does not interfere with the authority of Parliament, as one of its functions is “to develop and improve the legislation on regional policy and local self-government”.

14. The Analytical Center of Research of Territorial Development Problems (Appendix No. 4)

The same questions arise then we look at the activities of one more new institution – the Analytical center of research of territorial development problems, which mostly performs scientific-analytical and forecasting research on various aspects of territorial development of Ukraine. Its functions are duplicating the functions and tasks of the Ministry, the Regional Agencies and even the National Council. Another interesting point is that this Analytical center is a state scientific-research institution, but it is subordinated to the President of Ukraine. The doubts about the constitutionality of such wide competencies of the President in the domestic policy of the State are already raised before.

IV. CONCLUSIONS

15. Finally we should conclude that the National Strategy is the meritorious attempt to provide a conception of the reform of the territorial-administrative structure of Ukraine and the improvement of the local self-government system in conformity with the standards of the European Charter of Local Self-Government. The main “European standards” are more or less present in the National Strategy, that is, the constitutional and legal background of the local self-government, the detailed conception of local self-government, the competencies and responsibilities of local authorities, the question of the delimitation of territorial entities and their protection, the improvement of the administrative structure of local authorities, the financial resources of the local self-government bodies, the administrative monitoring of the activities of local authorities etc. Nevertheless, in trying to tailor these European standards to the particularities of national system, Ukraine complemented these standards with some incompatible ideas. If the concrete problems as well as the concrete, not contradictable ways to solve it will be identified, and if the fields of local self-government and regional policy will be clearly separated, the National Strategy will provide a strong point of depart for the creation of important legal and ideological background for the reorganisation of both local self-government and regional policy.

16. The National Strategy also provides for the creation of very wide and complicated system for the public administration in the fields of regional policy and administrative monitoring of local self-government, with institutions having almost unlimited, versatile competencies in these fields. It should be mentioned that the powers of the Ministry of Territorial Development and its territorial bodies - Regional Agencies - in the field of regional policy and in support of local self-government should be clearly defined and separated according to the principles of the European Charter of Local Self-Government, otherwise these provisions, which do not provide the exact limits of authority, would allow the Ministry and its territorial bodies to interfere into the activities of local self-government or even to violate its independence as well as to interfere into the activities of other state institutions. The functions of Regional Agencies, the National Council and the Analytical Center should be defined in such way as to avoid the duplication of the Ministry’s powers and, consequently, to avoid stronger centralization and control over local self-government as well conflict with the authorities of other state powers.