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

**OBSERVATIONS**  
**ON THE NATIONAL STRATEGY**  
**FOR THE REFORM**  
**OF THE TERRITORIAL ORGANISATION SYSTEM**  
**OF THE AUTHORITIES**  
**IN UKRAINE**

**By**

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The document is a brilliant presentation of ideas and suggestions regarding the reform of the territorial organisation system by the authorities in Ukraine. It underlines the importance of having strong regions, and shows that improvement in the effectiveness of the public power at all levels of the local government looks necessary too. Conflicts of competence should be avoided especially in the relations between national executive institutions and local authorities requiring rationalisation of the distribution of the functions. Reforms and developments also have to encourage the financial support of the central State for the local authorities and the regions in particular.

But it is difficult to say whether the ideas and suggestions elaborated upon in the paper can be helpful in implementing a concrete plan of improvement in the status of the local authorities in Ukraine. The statements are so vague and ambiguous that they rarely offer a clear indication of the future practical organisation of the power and of the effective functioning of it. There is a real danger that in accepting this document as a basis of the reform of the territorial organisation system of the authorities in Ukraine, the Council of Europe will open the way to institutionalise solutions which cannot be forecast today or; as a matter of fact; conflict with the correct interpretation of the standards of the local and regional self-government which are set out in many documents of the Council of Europe. The mere citation of these documents cannot be satisfactory insofar as the presentation of the organisational structure aimed at their implementation is missing and a choice has not been made between the different alternatives which are confronting the Ukrainian legislator and the authorities entrusted with the task of drafting the necessary legislation.

The negative impression of the programmatic part of the document is certainly not corrected by the drafts of the three regulations which are appended to the document itself (*Regulation on the Ministry of the Territorial Development of Ukraine; Regulation on the Regional Agencies of the Territorial Development in oblasts, cities Kiev and Sebastopol; Regulation on the National Council of the Territorial Development of Ukraine*). The lists of the tasks of the Ministry, of the agencies and of the National Council are dangerously open to many different solutions. They provide clear evidence of the fact that the Ukrainian authorities have not made any serious choice in the matter and want to keep their hands free in shaping the future reforms. In the meantime those lists do not appear respectful of the autonomy of the local authorities insofar as they offer to the Ministry, to the agencies and to the Council, several other chances of intervention in the field. The tasks are so numerous that each of them may be the source of an enlargement of the national power in relation to the local authorities. As frequently happens in the legislation of the new democracies, the preference for long lists of competences and tasks of the public authorities, even if it is apparently justified by the need to comply with a strict interpretation of the rule of law, can offer the possibility of a systematically large interpretation of the power of those authorities which can be derived by connecting in a unitary design all the enumerated functions of the authorities concerned. A systematic interpretation of a detailed piece of legislation frequently gives way to the enlarging of the functions of an authority which is entrusted with a long list of tasks and competencies, especially if these tasks and competencies are phrased in very vague and ambiguous terms as occurs in the document under consideration.

If we look at the principles of the reform envisaged in the document, we understand that, on one side, it gives relevance to humanism, legality, subsidiarity and publicity but, on the other side, it especially underlines its concern with the problems of efficiency and effectiveness of the power of the local authorities. It is true that the implementation of the constitutional human and civil rights is presented as one of the main steps in the strategy's application, that open consultations of the different authorities are required; that an extension of the responsibility and the

accountability of the concerned public servants is emphasised, but it is also true that all required steps for the implementation of the strategy do not offer a clear idea of the organisation of the democracy in the local authorities that the Ukrainian legislator has in mind. Some suggestions and ideas on this item could, or should be present even if documents which are dealing with a centralistic organisation of the power are not directly concerned with the implementation of the principles of the self-government but have to be in any case respectful of the main principles of the democracy and of the rule of law. We cannot help reminding the drafters of the document that the implementation of the principles of self-government may be put into effect according to different alternative designs which offer different chances to the satisfaction of the rights and interests of the people concerned. For instance, the document is practically silent about the space which will be left to the direct democracy, while it is well known that the direct participation of the citizens in the exercise of the power is a point of main concern in the present debate on the local government. Even if it may not always be convenient to entrust it directly to the special direct consultation of the concerned citizens.

I am not suggesting that Ukraine should give up a representative or quasi-representative model of local government. I am only underlining the fact that, notwithstanding the open statements about self-government which are at the basis of the document, the paper does not offer a clear idea of the democratic organisation of power at the level of the local authorities. In the same line of reasoning, it is worth mentioning that the document is silent about the possible balancing between the exigencies of the efficiency and effectiveness of the social and economic policies in the regions, oblasts and cities, and the will of the people concerned in drawing up the borders of the local authorities.

Moreover it is not clear if Ukraine means to stick to the Constitution presently in force or if they are envisaging amending this constitution or simply of completing it with additional rules concerning the system of the local government and the identification of its basic elements and its organisation. This is a remark which does not only regard marginal aspects of the matter but lists all the problems of the Ukrainian policy in the field of the local government which are dealt with in the paper. It is well known that the present Constitution was drafted according to the principles and guidelines of the European constitutional heritage. Therefore we could think that it does not require amendments in view of the implementation of the national strategy of the reform of the local authorities. But it is also evident that the paper is not only based on the opinion that many steps are to be taken in view of the adjustment of Ukraine's organisation of the local authorities to the exigencies of the social and economic, but also the political reality of the Republic.

According to article 144-145 of the Constitution, "decisions of bodies of local self-government, for reasons of nonconformity with the Constitution or the laws of Ukraine, are suspended by the procedure established by law with a simultaneous appeal to a court" on one side, and on the other side "the rights of local self-government are protected by judicial procedure".

These provisions apparently refer only to the judicial power, the judgement about the conformity with the Constitution and the national legislation of the acts of the bodies of the local self-government. The paper does not offer any clear indication as to the combination of the implementation of this principle with the objectives of the paper dealing with the reform's strategy. It is obvious that the intervention of the judicial authorities is possible when problems concerning the compliance with legal provisions are at stake. But which arrangements does the paper suggest for the solution of conflicts which can arise between central and local authorities in the matter of the strategic regional development? The authors of the paper suggest that a

change of views on state administration is required “from super-centralised system to methods of regulation policy”. Do they mean that all possible conflicts should be resolved only on a strictly legal basis even when conflicts regard matters of economic and social policies? I have the feeling that such a solution is too abstract and optimistic; the Ukrainian social and economic system is in a period of transition which implies the exercise of powers of decision and co-ordination by the central national authorities. These authorities should be entrusted with some large discretion in choosing economic and social measures to be adopted in establishing priorities of the interventions. The choices could be only partially enforceable by law and by judicial authorities.

Perhaps the most interesting aspect of the paper is its social and economic content. It presents a view of the local government which does not limit itself to the usual institutional aspects of self-government but also looks at the participation of the local authorities in shaping and implementing a strategy of economic and social development. If this is the case, it is evident that the usual institutional arrangements of the local self-government cannot be sufficient in dealing with the new problems of the Ukrainian society. Therefore the document should be more explicit in designing the features of a plan which will empower the bodies of the local government in the field of economic and social policies.