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**COMMENTS ON THE
DRAFT CONSTITUTION OF UKRAINE**

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The part of the draft dealing with the *Territorial organisation of power in Ukraine* (Chapter IX) is aimed at taking the place of three chapters of the Constitution presently in force, that is Chapter IX (Territorial structure of Ukraine), Chapter X (Autonomous republic of Crimea) and Chapter XI (Local self-government). These amendments do not apparently modify the constitutional positions of the different elements of the system of the administrative and territorial structure of Ukraine. If we want to have a clear idea on this point, we have to examine – obviously – the content of the provisions of the draft, which presents a lot of similarities with the provisions of the Constitution which the authors of the proposal would like to revise. The draft gives, sometimes, the impression that its main purpose is the formal revision of the old text by a clarification of its wording and a better systematization of the materials. But there are some elements of novelty which deserve to be mentioned in the frame of a analytical overview of the draft.

Art.143 does not use any more the expression “the combination of centralisation and decentralisation in the exercise of the state power“, which is present in the text of the old art.132. Perhaps the change is aimed at giving a free hand to the central state in dealing with the organization of the state administration (look at art. 151 of the draft which does not offer any suggestion about the fields of administrative activity which can be interested by the state administration decentralization).

Art. 144 reminds the old art. 133 with the addition of some definitions which are to-day present in art. 140. The last alinea is new and it could be useful as far as the new text cancels the list of the administrative territorial units and enhances the freedom of the Ukrainian Parliament in redrafting the boundaries of the administrative territorial units without revising the Constitution.

Art. 145 is very similar to the old art. 138 with some additions drawn from artt. 134 and 135. The approval of the Crimean Constitution does not require anymore the approval of the Verkhovna Rada of Ukraine (look at the old art. 135). There are amendments affecting the list of the subject matters which are comprised in the competence of the Autonomous Republic of Crimea: organising and conducting local referendums (art. 138.2) is no more mentioned; the Republic properties are apparently cancelled (art. 138.3); new expressions are used in the text of the old art. 138.7: “freedoms“ are not mentioned, “national amity“ instead of “national harmony“.

If I understand correctly the draft partially follows the choice of the Constitution in distinguishing the kinds of formal acts and policies of the Republic which are listed in this article from the matters which can be regulated by the republican authorities which are listed in art. 147 (look at the old artt. 137 and 139). There are some overlappings, but the main idea is that the acts and policies listed in art. 145 have to be adopted in the fields of activity mentioned in art. 147. Normative acts are not mentioned: if we compare this silence with the following provisions, we can conclude that the content of the autonomy of the Republic shall be restricted.

Art. 146 “reenacts“ the old art. 136. There are some novelties: the second and the third alineas are new; in the last alinea it is not clear if the national legislation has a say – together with the Constitution of Ukraine and the decisions of the republican Verkhovna Rada - in establishing the procedure of formation and operation and the authority of the Verkhovna Rada and the Council of Ministers of the Republic. The answer has to be positive because the draft apparently cancels the normative power of the Verkhovna Rada.

Art. 147 only adds point 10 to the list of the old art. 137, but it could be the starting point for an enlargement of the substantial (not formal) competence of the Republic.

Art. 148 differs from the old second alinea of art. 135 because:

- It does not mention normative legal acts of the Verkhovna Rada but it only mentions acts of this body: apparently Crimea is deprived of its normative powers; in the past

there were decisions of the republican Council of Ministers, the draft is aimed at restricting to decisions also the competence of the Verkhovna Rada.

- Apparently the executive powers of the Republic should be exercised for the implementation of the national laws and acts. The draft is silent about the implementation of the decisions of the Verkhovna Rada.
- The Ukrainian President may suspend acts of the Verkhovna Rada, but see the old art. 137, second alinea.

Art. 149 is a copy of the old art. 139. The last alinea of the old art. 136 is cancelled.

Art. 150 opens the part of the draft devoted to the general institutions of the territorial structure of power in Ukraine, transferring here the provisions of the old art. 118. It is interesting underlining that it regards not local government entities but the state administrations, which exercise decentralized state powers. Their heads are under the control of the President and the Cabinet of Ukraine, and are appointed by the President on the basis of proposals submitted by the Cabinet. They can have representative offices within the respective oblasts. It is not clear if the provisions of this part of the Constitution also regard the local government in the Republic of Crimea: my answer is positive because the Republic has no more legislative powers which are required in view of the organization of the local entities and the state administrations.

Art. 151 lists the functions of the heads: they control the activities the executive state authorities and of the local government authorities, control the implementation of the state budget and programmes, provide for the coordination of the mentioned authorities, and have others functions which can given them by the laws. Their control functions are apparently a novelty. Their acts can be revoked by the Cabinet of Ukraine.

The presence of these provisions in this part of the Constitution and their content clearly emphasize the relevance which is given the territorial organization of the state power in view of a centralized control of the local government institutions.

Art. 152 summarises the content of the old art. 140 with some interesting cuts: for instance only the communities are mentioned as institutions of the local government and their activity is no more explicitly connected with the exercise of the right of the territorial communities to the self-government.

Art. 153 is connected with the old art. 142. But the second alinea of this article is missing in the draft of the new text notwithstanding that it offers an interesting solution to the problems of the cooperation between the different local entities.

Art. 154 only mentions the community council but cuts its term of office and the term of office of the head of the entity from four to three years (look at the old art. 141).

Art. 155 regards the elective oblast and district councils, but oblasts and districts are no more mentioned in art. 152 as institutions of the local government. They are not apparently expression of the right of the people to the self-government even if they represent the "common interests of the residents of the communities".

Art. 156 contains a detailed list of the functions of the oblast or district councils. Such a list is missing for the councils of the communities. It is not easy to explain such a choice. Does it mean that the draft would like encouraging the joint exercise of the decision making powers of a group of communities (associated in an oblast or in a district) or does it mean that the bodies of the communities are supposed to be entrusted with the implementation of the decisions of the oblast and district councils? The point should be clarified. In any case the new text presents

some novelties because provisions concerning referendums, taxes and management of communal enterprises are missing (see the old art. 143).

Art. 157 provides for a redrafting of the rules concerning the delegation of state powers to the local government.

Art. 158 is a copy of the old art. 146.

Conclusions:

From the results of this overview of the draft we can draw some conclusions:

- the status of the Autonomous Republic of Crimea shall be changed depriving it of the legislative powers; it implies that the autonomy of the Republic is reduced, even if the adoption of its Constitution does not require any more the approval of the Verkhovna Rada of Ukraine.
- the territorial dimensions of the entities of the local government shall be deprived of their constitutional guarantee because a list of them is missing in the text; it is not clear if also the Republic of Crimea does not have any more this constitutional guarantee of its territorial dimensions.
- the relations between communities, oblasts and districts are not clear: is there and where is a guarantee of the functions of the communities against the State, the territorial state administrations, and the oblasts and the districts?

The general impression is that the draft would like to take profit of the rationalization of the text of the Constitution to implement a policy of centralization, increasing the powers of the territorial structures of the state administrations and reducing the powers of the entities of the local government and of the Republic of Crimea.