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OPINION / AVIS

**ON THE PRESENT CONSTITUTIONAL SITUATION IN UKRAINE
FOLLOWING THE ADOPTION
OF THE CONSTITUTIONAL AGREEMENT
BETWEEN THE SUPREME RADA OF UKRAINE
AND THE PRESIDENT OF UKRAINE**

**SUR LA SITUATION CONSTITUTIONNELLE ACTUELLE
EN UKRAINE
A LA SUITE DE L'ADOPTION
DE L'ACCORD CONSTITUTIONNEL
ENTRE LE CONSEIL SUPRÊME ET LE PRÉSIDENT DE L'UKRAINE**

OPINION

ON THE PRESENT CONSTITUTIONAL SITUATION IN UKRAINE
FOLLOWING THE ADOPTION OF THE CONSTITUTIONAL AGREEMENT
BETWEEN THE SUPREME RADA OF UKRAINE
AND THE PRESIDENT OF UKRAINE

on the basic principles of the organisation and functioning
of the State power and local self-government
pending the adoption of the new Constitution in Ukraine

adopted by
the European Commission for Democracy through Law
at its 24th Meeting, in Venice, 8-9 September 1995

on the basis of the contributions from
Ms Anna MILENKOVA, Bulgaria
Mr Sergio BARTOLE, Italy
Mr Godert W. MAAS GEESTERANUS, Netherlands
Mr Cyril SVOBODA, Czech Republic
Mr Nicolay V. VITRUK, Russia
with a Memorandum by
Mr Oleksander LAVRYNOVYCH, Ukraine (Appendix)

A V I S

SUR LA SITUATION CONSTITUTIONNELLE ACTUELLE
EN UKRAINE
A LA SUITE DE L'ADOPTION DE L'ACCORD CONSTITUTIONNEL
ENTRE LE CONSEIL SUPRÊME
ET LE PRÉSIDENT DE L'UKRAINE

sur les principes fondamentaux de l'organisation
et du fonctionnement des pouvoirs de l'Etat et de l'autonomie locale
en attendant l'adoption de la nouvelle Constitution de l'Ukraine

adopté par
la Commission européenne pour la Démocratie par le droit
à sa 24ème réunion, à Venise, les 8-9 septembre 1995

sur la base des communications présentées par:
Mme Anna MILENKOVA, Bulgarie
M. Sergio BARTOLE, Italie
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M. Nicolay V. VITRUK, Russie
et d'un Memorandum de
M. Oleksander LAVRYNOVYCH, Ukraine (Annexe)

I. The adoption of the Constitutional Agreement.

1. The Ukrainian authorities have taken the unusual step of concluding a Constitutional Agreement between the President and Parliament which for most purposes serves as an interim Constitution. This is to be explained in the light of the recent history of Ukraine and the present political situation.

After having declared the State sovereignty of Ukraine and the primacy of its laws over those of the URSS in July 1990, the Ukrainian Parliament adopted the Declaration of Independence of Ukraine on 24 August 1991: this Declaration was confirmed by referendum on 1 December 1991.

Notwithstanding that the Declaration of July 1990 had provided for some principles which were in conflict with principles in the Ukrainian Constitution of 20 April 1978, that Constitution remained in force and was only partially amended for the particular purpose of ensuring the transition of Ukraine from the communist regime to freedom, democracy and the rule of law. Some further amendments, in respect of which the required majority of two thirds of the total number of the People's Deputies of Ukraine was obtained, were subsequently approved, but the necessary consent has not been achieved for a completely new draft Constitution. Ukraine therefore still maintains in force the old amended socialist Constitution.

3. The Supreme Rada of Ukraine and the President of Ukraine, which are the only two directly elected national bodies of Ukraine, decided to settle their differences by adopting a constitutional agreement on the basic principles of the organisation and functioning of the State power and local self-government in Ukraine pending the procedure aimed at adopting the new Constitution of Ukraine. After difficulties and discussions, the agreement was approved by a law of the Supreme Rada and - later - a compromise was adopted by law for its enforcement and for the approval in the future of the new Constitution. But neither the first Act nor the second one obtained the required majority of two thirds of the members of the Supreme Rada.

4. On the basis of the preamble of the Agreement, and according to the dispatches of the RIA news agency, both the majority of the Supreme Rada and the President recognise that the content of the 1978 Constitution (even in its amended text) and that of the new law conflict in some parts. Nevertheless they apply the rules that, on the one hand, "the legislation of Ukraine shall be effective in the part which is not contrary to the rules" of the new law and, on the other hand, that "the provisions of the applicable constitution of Ukraine shall be effective only in the part which complies with the present constitutional agreement" (art. 61 I and II of the Agreement).

I. Adoption de l'accord constitutionnel

1. Les autorités ukrainiennes ont pris l'initiative inhabituelle de conclure, entre le Président et le parlement, un accord constitutionnel qui tient quasiment lieu de Constitution provisoire. Cela s'explique si l'on tient compte de l'histoire récente de l'Ukraine et de la situation politique qui y règne actuellement.

2. Après avoir déclaré la souveraineté de l'Etat ukrainien et la primauté de ses lois sur celles de l'URSS en juillet 1990, le Parlement ukrainien a adopté la déclaration d'indépendance de l'Ukraine le 24 août 1991, déclaration qui a été confirmée par référendum le 1^{er} décembre 1991.

En dépit du fait que la déclaration de juillet 1990 énonçait certains principes qui étaient en contradiction avec ceux énoncés dans la Constitution ukrainienne du 20 avril 1978, celle-ci restait en vigueur et n'était que partiellement modifiée dans le but précis d'assurer la transition de l'Ukraine du régime communiste à la liberté, à la démocratie et à l'Etat de droit. Quelques amendements supplémentaires, qui recueillirent la majorité requise des deux tiers du nombre total des députés du peuple ukrainien, furent approuvés par la suite, mais l'accord nécessaire ne s'est pas fait sur un projet de Constitution entièrement nouveau. L'Ukraine applique donc toujours l'ancienne Constitution socialiste sous sa forme modifiée.

3. Le Conseil (Rada) suprême et le Président de l'Ukraine, qui sont les deux seules institutions directement élues par le peuple ukrainien, ont décidé d'oublier leurs différends en adoptant un accord constitutionnel sur les principes fondamentaux de l'organisation et du fonctionnement du pouvoir central et de l'autonomie locale en Ukraine, en attendant de trouver la procédure qui permettra d'adopter la nouvelle Constitution de l'Ukraine. Après certaines difficultés et à l'issue de pourparlers, cet accord a été entériné par une décision du Conseil suprême et, par la suite, une solution de compromis a été adoptée par la voie législative en vue de sa mise en œuvre et de l'approbation dans le futur de la nouvelle Constitution. Toutefois, ni la première ni la deuxième loi n'ont obtenu la majorité requise des deux tiers des membres du Conseil suprême.

4. Conformément au préambule de l'accord et à en croire les rapports de l'Agence de presse RIA, aussi bien la majorité du Conseil suprême que le Président reconnaissent que les dispositions de la Constitution de 1978 (même sous sa forme modifiée) et celles de la nouvelle législation sont contradictoires à divers égards. Néanmoins, ils ont décidé d'appliquer le principe selon lequel, d'une part, la législation de l'Ukraine sera appliquée dans la mesure où elle n'est pas contraire aux dispositions de la nouvelle législation et, d'autre part, les dispositions de la Constitution ukrainienne en vigueur ne sont appliquées que dans la mesure où elles sont conformes à l'accord constitutionnel (article 61.I et II de l'accord).

5. As the Agreement has been adopted by law, it cannot be treated as a mere constitutional convention, that is a political agreement between the supreme elected bodies of the country on the ways of implementing the Constitution in force. But the failure to approve the law by the required majority has the consequence that the old Constitution cannot be superseded by the new law. Nevertheless this was and is the objective of Parliament and of the President: pending the procedure aimed at the approval of the new Constitution, they agreed to apply the new principles set forth in the law "On State power and local self-government in Ukraine" on the basis of their good will, and having regard to their mutual concessions and compromises.

The present position, then, is a transitory solution which does not imply the abrogation of the old Constitution but - instead - implies the suspension of its rules concerning the State power and local self-government in Ukraine, or rather those rules which do not comply with the new principles. This solution is obviously based on a political agreement, but the content of this agreement is not the new principles, but rather the decision of the governing bodies of Ukraine to settle their differences and to abide by principles which are generally accepted and have been adopted by a parliamentary law. It is not a solution respectful of the constitutional hierarchy of the sources of law provided for by the Ukrainian Constitution of April 1978. Nevertheless, it is a solution which complies with the principle of legality insofar as it binds the Ukrainian governing bodies to adhere to an identified and stable statute approved by Parliament and not to an informal, political, agreement only which might be susceptible to constant change. Frankly speaking we have to acknowledge that there has been a rupture in Ukrainian constitutional continuity, but it is a transitory rupture only until such time as the full legality of the normative order is restored through the adoption of the new Constitution.

II. Assessment of the present constitutional situation

A. The 1978 Constitution

6. The force of only a part of the old Constitution is suspended. For instance, its chapters 5 and 6 are still in force and shall be enforced to the extent that they do not contradict the constitutional Agreement, or rather comply with it. This is an important feature of the present constitutional order in Ukraine because the Supreme Rada has not been able to adopt a new bill of rights since the Declarations of Ukrainian sovereignty and independence.

5. Etant donné que cet accord a été adopté par des voies légales, il ne saurait être considéré comme une simple convention constitutionnelle, c'est-à-dire un accord politique conclu entre les institutions suprêmes du pays au sujet des modalités d'application de la Constitution en vigueur. Toutefois, le fait que la loi n'ait pas été approuvée à la majorité requise entraîne comme conséquence que l'ancienne Constitution ne peut pas être abrogée par la nouvelle loi. L'objectif du parlement et du Président était et demeure toutefois le suivant: en attendant l'établissement de la procédure qui permettra d'approuver la nouvelle Constitution, ils sont convenus d'appliquer les nouveaux principes énoncés dans la loi sur le pouvoir de l'Etat et l'autonomie locale en Ukraine en faisant preuve de bonne volonté et en tenant compte des concessions et des arrangements transactionnels qu'ils se sont mutuellement consentis.

La situation actuelle est donc une solution transitoire qui n'entraîne pas l'abrogation de l'ancienne Constitution, mais qui suppose plutôt la suspension des règles qu'elle contenait au sujet du pouvoir de l'Etat et de l'autonomie locale en Ukraine, plus exactement des règles qui ne correspondent pas aux nouveaux principes. Cette solution se fonde de toute évidence sur un accord politique, dont le contenu toutefois n'est pas constitué par les nouveaux principes, mais plutôt par la décision des organes dirigeants de l'Ukraine d'oublier leurs différends et d'observer des principes qui sont généralement acceptés et qui ont été adoptés par une décision du parlement. Ce n'est pas là une solution qui respecte la hiérarchie constitutionnelle des sources du droit comme le prévoyait la Constitution d'avril 1978. Il s'agit néanmoins d'une solution qui respecte le principe de la légalité dans la mesure où elle place les organes dirigeants de l'Ukraine dans l'obligation de respecter un statut déterminé et stable qui a été approuvé par le parlement plutôt qu'un simple accord politique officieux toujours sujet à des modifications. A dire vrai, nous devons admettre qu'il y a eu interruption de continuité dans la Constitution ukrainienne, mais il s'agit seulement d'une interruption temporaire en attendant le rétablissement de la pleine légalité de l'ordre normatif avec l'adoption de la nouvelle Constitution.

II. Evaluation de la situation constitutionnelle actuelle

A. *Constitution de 1978*

6. L'application d'une partie seulement de l'ancienne Constitution est suspendue. Ses chapitres 5 et 6 par exemple demeurent en vigueur et resteront appliqués dans la mesure où ils ne sont pas en contradiction avec l'accord constitutionnel, ou plus exactement dans la mesure où ils le respectent. C'est là un aspect important de l'ordre constitutionnel actuel en Ukraine, car le Conseil suprême n'a pas été en mesure d'adopter une nouvelle déclaration des droits depuis la Déclaration de souveraineté et d'indépendance de l'Ukraine.

7. In effect, the constitutional provisions on the fundamental rights, freedoms and duties of the citizens of Ukraine are drafted in a very old fashioned way, respectful of the principles of socialist law and - especially - of the theory of the material guarantee of rights and freedoms. Their main purpose is to entrust the State authorities with the obligation to create the material conditions for ensuring the enjoyment by citizens of their rights and freedoms. This arrangement implied, on the one hand, that the State authorities should focus on the material protection more than the legal and judicial guarantees of rights and freedoms and, on the other hand, that their enjoyment and the enjoyment of the material guarantees of these rights and freedoms were restricted to those who complied with the political obligations of the socialist regime. An example of a wording of a fundamental freedom not compatible with international standards is Art. 48 which makes it possible to severely restrict freedoms of expression and assembly.

8. Nevertheless the maintenance in force of these provisions, which are unaffected by the constitutional Agreement, can offer ground for interventions by the Constitutional Court when the law establishing this body is adopted in due course. Even if they are drafted according to the socialist theory of law, the constitutional provisions concerning fundamental rights and freedoms can constitute a basis for the judicial review of legislation in the field. They could be corrected and integrated by some of the principles received in the Ukrainian legal order through the Declaration of sovereignty adopted in July 1990 and the partial amendments of the Constitution. Obviously in this way fundamental rights and freedoms could benefit from only a weak and transitory entrenchment in the constitutional system, but such an entrenchment would be a bridge to the adoption of new statutes on the implementation of rights and freedoms and on their reception in the Ukrainian legal order through the signature and ratification of international instruments in the field.

B. *The General Provisions of the Constitutional Agreement*

Preamble

9. The preamble only defines the purpose of the law as being "desirous to reform State power on the principles of strict delimitation of functions between its legislative and executive branches as a necessary prerequisite for overcoming of economy, social and constitutional crisis". The preamble is silent in relation to the judicial power. Nonetheless it is clear that judicial reform is the fundamental prerequisite for the economic, political and social transition. This anomaly must be rectified in the preamble because the constitutional Agreement contains numerous sections dealing with judicial power, including section V.

7. En fait, les dispositions constitutionnelles relatives aux libertés et aux devoirs fondamentaux des citoyens de l'Ukraine sont rédigées d'une manière très démodée, qui respecte les principes du droit socialiste, et plus particulièrement la théorie de la garantie matérielle des droits et des libertés. Ces dispositions visent essentiellement à imposer aux autorités de l'Etat l'obligation de créer les conditions matérielles propres à garantir que les citoyens peuvent jouir de leurs droits et de leurs libertés. Cette formule donnait à entendre, d'une part, que les autorités nationales devraient plus s'attacher à la protection matérielle qu'à la protection juridique et judiciaire des droits et libertés et, par ailleurs, que le bénéfice de ces droits et libertés ainsi que des garanties matérielles qui les accompagnaient serait limité aux individus qui respectaient les obligations politiques du régime socialiste.

L'article 48, qui permet de sérieusement limiter la liberté d'expression et de réunion, fournit un exemple de libellé d'une liberté fondamentale qui est incompatible avec les normes internationales.

8. Le maintien en vigueur de ces dispositions, qui ne sont pas modifiées par l'accord constitutionnel, pourra néanmoins justifier des interventions de la part de la Cour constitutionnelle lorsque la loi portant création de cet organe sera adoptée en temps voulu. Même si leur rédaction correspond à la théorie socialiste du droit, les dispositions constitutionnelles concernant les droits de l'homme et les libertés fondamentales peuvent servir de point de départ à la révision, par le pouvoir judiciaire, de la législation dans ce domaine. Ces dispositions pourraient être corrigées et complétées au moyen de quelques-uns des principes qui ont été acceptés dans l'ordre juridique ukrainien en vertu de la Déclaration de souveraineté adoptée en juillet 1990 et des amendements partiels à la Constitution. Il est évident que, de la sorte, le système constitutionnel n'offrirait qu'une protection insuffisante et transitoire des libertés fondamentales, mais cette protection ouvrirait la voie à l'adoption de nouveaux statuts sur le respect des droits et des libertés et sur leur incorporation dans l'ordre juridique ukrainien par le biais de la signature et de la ratification d'instruments internationaux dans ce domaine.

B. *Dispositions générales de l'accord constitutionnel*

Préambule

9. Le préambule définit simplement l'objet de la loi comme visant à réformer le pouvoir de l'Etat selon les principes d'une délimitation stricte des fonctions entre le législatif et l'exécutif en tant que condition incontournable pour résoudre la crise économique, sociale et constitutionnelle. Le préambule ne dit rien au sujet du pouvoir judiciaire. Il n'en est pas moins évident que la transition économique, politique et sociale passe obligatoirement par la réforme judiciaire. Cette anomalie devra être corrigée dans le préambule car l'accord constitutionnel contient de nombreuses sections qui traitent du pouvoir judiciaire, y compris la section V.

Article 2

10. The beginning of Article 2, which provides that power belongs to the people and that the people are the sole source of power, corresponds to classical constitutional law doctrine. The article continues by stating that the people exercise this power both directly, i.e. by referendum, and through the system of public and local self-government authorities. The accent is thus put on direct democracy, following the doctrine of self-government prevailing during the perestroika period.

This may threaten the constitutional character of the system of government and endanger political stability. It is recommended that the structures of a representative political system be clearly established, and that at the same time various forms of direct participation by the people be foreseen.

Article 5

11. Paragraph 1 of this Article sets out the principle of the supremacy of human rights. It is to be regretted that this is not taken up again, e.g. in Articles 24, 31 and 43 (with the exception of Art. 37). The Russian experience shows that this paragraph can have practical importance for the work of the Constitutional Court of Ukraine, in particular when applying Art. 17, N°. 27.

C. The Supreme Rada

12. The Agreement contains a mixture of various forms of government. While some parts retain certain features of the Soviet system, other parts introduce certain principles and constitutional arrangements typical for countries like France and the United States. There is no clear decision in favour of a parliamentary or a presidential form of government. Even if the elements of presidentialism prevail, presidential government is far from being realised in its pure form. When establishing a new constitutional system, particular attention has to be given to the form of government. Clarifying this question would have enabled certain contradictions to be avoided.

Article 6

13. It is not clear how the elections are to be conducted under a mixed majoritarian-proportional system. The essence is that in fact every electoral system is majoritarian-proportional or proportional-majoritarian. Generally, each system bears some elements of the other one, but one prevails over the other. This paragraph must clarify which of the two systems will be adopted or whether in fact both elements will be adopted e.g. by introducing a second chamber/senate.

Article 7

14. This article provides that the Supreme Rada carries out its work in sessions of 2 types, ordinary and extraordinary, without defining the length of the sessions. This opens the door to the old Soviet practice of limiting the sessions of representative bodies to short periods destined simply to rubberstamp decisions already taken.

Article 2

10. Le début de l'article 2, qui prévoit que le pouvoir appartient au peuple et que le peuple est la seule source du pouvoir, correspond à la doctrine du droit constitutionnel classique. Cet article précise ensuite que le peuple exerce ce pouvoir à la fois directement, c'est-à-dire par la voie du référendum, et par l'intermédiaire des autorités publiques et des autorités autonomes locales. L'accent est donc mis sur la démocratie directe conformément à la doctrine de l'autonomie qui dominait pendant la période de la perestroïka.

Cela pourrait mettre en danger le caractère constitutionnel du système de gouvernement et menacer la stabilité politique. Il est recommandé de définir clairement les structures d'un système politique représentatif, tout en prévoyant diverses formes de participation directe par le peuple.

Article 5

11. Le paragraphe 1 de cet article énonce le principe de la suprématie des droits de l'homme. Il y a lieu de regretter que cette idée ne soit pas reprise, par exemple dans les articles 24, 31 et 43 (la seule exception est l'article 37). L'expérience de la Russie montre que ce paragraphe peut avoir une importance pratique pour le fonctionnement de la Cour constitutionnelle en Ukraine, en particulier pour l'application de l'article 17, n° 27.

C. Le Conseil suprême

12. L'accord prévoit un mélange de diverses formes de gouvernement. Tandis que certaines sections conservent les caractéristiques du système soviétique, d'autres font intervenir des principes et des arrangements constitutionnels caractéristiques de pays tels que les Etats-Unis et la France. Aucune tendance ne se dessine clairement en faveur d'un système de gouvernement de type parlementaire ou présidentiel. Même si les éléments d'un système présidentiel dominant, ce système est loin d'être appliqué sous sa forme la plus pure. Lors de l'établissement d'un nouveau système constitutionnel, une attention particulière doit être accordée au type de régime adopté. Si cette question avait été précisée, certaines contradictions auraient pu être évitées.

Article 6

13. On ne voit pas clairement comment se dérouleront les élections dans un système à la fois majoritaire et proportionnel. Le fait est que tout système électoral est proportionnel-majoritaire ou majoritaire-proportionnel. En règle générale, chaque système comporte certains éléments propres à l'autre, mais l'un des deux l'emporte. Ce paragraphe doit préciser lequel des deux systèmes sera adopté ou si en fait les deux éléments seront retenus, par exemple en prévoyant une seconde chambre ou un sénat.

Article 7

14. Cet article prévoit que le Conseil suprême s'acquitte de ses fonctions au moyen de deux types de sessions, ordinaires et extraordinaires, mais sans définir la durée de ces sessions. Cela ouvre la porte à d'anciennes pratiques soviétiques qui consistaient à limiter les sessions des organes représentatifs à de courtes périodes destinées simplement à entériner officiellement des décisions déjà prises.

Experience shows that the legislative agenda of parliament tends to be overburdened during periods of transition, and it is therefore appropriate to provide for long-lasting sessions enabling the legislature to become an effective forum for public discussion of the fundamental questions of society.

Political practice in Bulgaria is instructive in this respect. The Constitution provides that the National Assembly acts continuously, and the Assembly is therefore in session during the whole year with the exception of brief Christmas and Easter holidays as well as one month in the summer.

Articles 9 and seq.

15. The text provides for two kinds of organs at the top of the Supreme Rada:

- the Bureau of the Supreme Rada, composed of the Chairman and Vice-Chairman of the Supreme Rada of Ukraine, the chairmen of standing commissions, and the heads of parliamentary groups and factions in the Supreme Rada of Ukraine.
- the President/Chairman assisted by Vice Chairmen with more extensive competences.

This seems to be too much. It would be preferable to make a choice between the two classical systems of chairing a Parliament: collective bureau or speaker. In the former case, the Bureau would have to be made smaller to become more effective. In the latter case, a consultative body composed of the heads of parliamentary groups and standing committees should be set up.

The text also gives the Chairman powers not proper for the holder of such an office, in particular to submit together with the President of the Republic proposals for the appointment of the Chairman of the Constitutional Court as well as of half the judges. This confers too much power on the chairman, and may induce him to enter into competition with the President of the Republic. It is preferable that the Chairman acts only as an intermediary and that the initiative in these cases lies with deputies of parliamentary groups.

Articles 13 and 14

16. The rules on the legal status of the Deputies will be contained in a separate law. Certain questions like parliamentary immunity and the character of the mandate of the Deputies should however be settled by the Constitution itself.

Article 15

17. The right to initiate legislation in the Supreme Rada of Ukraine is given to people's deputies, the standing commissions of the Supreme Rada, the President of Ukraine, the Cabinet of Ministers, the Supreme Court and the Highest Arbitration Court of Ukraine.

L'expérience montre que l'ordre du jour législatif du parlement est souvent surchargé au cours des périodes de transition et il conviendrait donc de prévoir de longues sessions pour permettre à la législature de devenir une enceinte efficace pour débattre en public des aspects fondamentaux de la société.

La pratique politique de la Bulgarie est intéressante à cet égard. La Constitution prévoit que l'Assemblée nationale siège en permanence, c'est-à-dire pendant toute l'année à l'exception de courtes vacances à Noël, à Pâques et durant un mois pendant l'été.

Article 9 et suivants

15. Le texte prévoit deux types d'organes à la tête du Conseil suprême:

— le bureau du Conseil suprême, qui se compose du président et du vice-président du Conseil suprême de l'Ukraine, des présidents des commissions permanentes et des chefs des groupes et des factions parlementaires au Conseil suprême;

— le président aidé des vice-présidents dotés de compétences plus étendues.

Cela semble excessif. Il serait préférable de choisir entre les deux systèmes classiques de présidence d'un parlement: bureau collectif ou président de l'Assemblée. Dans le premier cas, la composition du bureau devrait être réduite afin d'en accroître l'efficacité. Dans le second cas, il conviendrait de créer un organe consultatif composé des chefs des groupes parlementaires et des commissions permanentes.

Le texte confère aussi au président du Conseil suprême des pouvoirs incompatibles avec les fonctions du titulaire de ce poste, notamment lorsqu'il s'agit de soumettre conjointement avec le Président de la République des propositions pour la nomination du président de la Cour constitutionnelle et de la moitié des juges. Cela confère un pouvoir excessif au président du Conseil suprême et pourrait l'encourager à entrer en concurrence avec le Président de la République. Il est préférable que le président du Conseil suprême fasse uniquement office d'intermédiaire et que l'initiative dans ce cas revienne aux députés appartenant aux groupes parlementaires.

Articles 13 et 14

16. Les dispositions relatives au statut juridique des députés figureront dans une loi distincte. Certaines questions telles que l'immunité parlementaire et la nature du mandat des députés devraient toutefois être réglées dans la Constitution proprement dite.

Article 15

17. Le droit de proposer des lois au Conseil suprême de l'Ukraine est accordé aux députés du peuple, aux commissions permanentes du Conseil suprême, au Président de l'Ukraine, au Cabinet des ministres, à la Cour suprême et à la Haute Cour d'arbitrage.

The Deputies certainly need to have this right. It is questionable whether it should be given to the Supreme Court and the Highest Arbitration Court. Law-making is political by its nature and the judiciary should remain outside politics, concentrating on applying the laws.

Nor does it appear to be the best solution to give the right to initiate legislation both to the President and to the Cabinet of Ministers. This can lead to divergencies within the executive power as to the policies to be pursued. In general, the principle of harmony of the executive requires that only one organ submit draft laws to Parliament. Preferably this would be the government since it is politically responsible before the Supreme Rada. As a compromise, draft laws might be prepared by the government but submitted to the Supreme Rada following presidential approval.

The procedure for urgent consideration of certain bills provided for in Art. 15, para.2, appears to be a good solution, enabling the executive to determine priorities and to pursue a steady and effective policy.

Article 17 No. 1

18. This paragraph does not make a distinction between Constitution-making and legislative powers, and thereby gives one State organ the possibility to unilaterally change the rules of the game. At least there should be provision for different procedures and majorities for the adoption of the Constitution.

The Supreme Rada is empowered, following a rule already established by Art. 97, para. 19, of the old Constitution, to provide official interpretation of the Constitution, laws, codes and other codified acts. On the other hand, the courts are independent (article 37 par. 2) and they obey only the law (article 37 par. 3). The question is whether courts are bound to follow the official interpretation of the Supreme Rada, and more generally whether this represents the beginning and end of judicial independence. It does not seem rational to give the Supreme Rada such a competence of interpretation if one sets up a Constitutional Court.

Article 17 No. 17

19. The power of the Rada to announce the election of the President and accept his resignation is questionable. The Head of State derives his power directly from the nation as a whole and should therefore not depend on the legislature. The first function could be entrusted to the Central Electoral Commission and the second to the Constitutional Court.

Article 17 No. 10

20. While Art. 6 provides for a 4 year mandate, this paragraph gives the Supreme Rada the possibility to dissolve itself and hold early elections. This may lead to the possibility of exercising pressure on Parliament, including pressure from non-constitutional bodies. If it is contentious whether the separation of powers requires a fixed mandate or allows early dissolution, dissolution should at least be limited to conflicts between the institutions. If one wishes to retain the possibility of early dissolutions, the possible grounds for such a step should at least be enumerated.

Il est certain que ce droit doit être accordé aux députés, mais il n'est pas sûr qu'il devrait être accordé à la Cour suprême et à la Haute Cour d'arbitrage. L'élaboration des lois a en soi un caractère politique et le pouvoir judiciaire devrait rester extérieur à la politique pour s'attacher à faire appliquer les lois.

Il ne semble pas non plus judicieux d'accorder le droit de proposer des lois à la fois au président et au Conseil des ministres. Cela pourrait entraîner des divergences de vues au sein de l'exécutif quant à l'orientation de la politique à suivre. En règle générale, le principe de l'harmonie au sein de l'exécutif exige qu'un organe seulement puisse soumettre des projets de loi au parlement. Il serait préférable que cela incombe au gouvernement, qui est politiquement responsable devant le Conseil suprême. A titre de solution de compromis, les projets de loi pourraient être élaborés par le gouvernement, mais à condition d'être soumis au Conseil suprême après avoir reçu l'approbation du Président.

La procédure prévue au paragraphe 2 de l'article 15 pour l'examen de toute urgence de certains projets de loi semble constituer une bonne solution en permettant à l'exécutif de décider des priorités et de poursuivre son action avec régularité et efficacité.

Article 17, paragraphe 1

18. Ce paragraphe n'établit pas de distinction entre l'élaboration de la Constitution et le pouvoir législatif et confère donc à un organe d'Etat la possibilité de modifier unilatéralement les règles du jeu. Des procédures et des majorités différentes devraient au moins être prévues pour l'adoption de la Constitution.

Le Conseil suprême est habilité, en application d'une règle qui figurait déjà au paragraphe 19 de l'article 97 de l'ancienne Constitution, à donner une interprétation officielle de la Constitution, des lois, des codes et autres textes codifiés. En revanche, les tribunaux sont indépendants (article 37, paragraphe 2) et ils n'obéissent qu'à la loi (article 37, paragraphe 3). Il s'agit de savoir si les tribunaux sont tenus de suivre l'interprétation officielle du Conseil suprême et, d'une manière plus générale, si cela représente les limites de l'indépendance judiciaire. Il ne semble pas logique d'accorder cette compétence d'interprétation au Conseil suprême si l'on crée une Cour constitutionnelle.

Article 17, paragraphe 17

19. La compétence du Conseil suprême pour annoncer l'élection du Président et accepter sa démission est contestable. Le chef de l'Etat détient son pouvoir directement du peuple tout entier et ne devrait donc pas dépendre de la législature. La première fonction pourrait être confiée à la Commission électorale centrale et la seconde à la Cour constitutionnelle.

Article 17, paragraphe 10

20. Alors que l'article 6 prévoit un mandat de quatre ans, ce paragraphe confère au Conseil suprême le pouvoir de se dissoudre et de procéder à des élections anticipées. Cela pourrait ouvrir la voie à ce que des groupes, y compris des organes non constitutionnels, fassent pression sur le parlement. Bien que l'on puisse se demander si la séparation des pouvoirs exige un mandat d'une durée déterminée ou autorise une dissolution anticipée, la dissolution devrait au moins être limitée aux conflits entre les institutions. Si l'on souhaite maintenir la possibilité d'une dissolution anticipée, les motifs éventuels de cette décision devraient au moins être spécifiés.

Article 17 No. 15 / Article 24 No. 9

21. The functions of the Defense Council should be clarified to avoid conflicts with the Council of National Security chaired by the President (see Art. 24, para. 9).

Article 17 No. 17

22. It is questionable to have the Chairman of the Constitutional Court elected by the Supreme Rada. Experience in post-totalitarian States shows that this may politicise (and delay) not only the establishment but also the work of the Court, and that it places the Chairman in a difficult position, incompatible with the status and object of the Court.

Article 17 Nos. 18 and 20

23. The appointment of the highest judges is of particular importance. A question arises when we see that, under Nos. 18 and 20, the appointing authority (Parliament) is also competent to dismiss. No. 20 adds to this: "according to the procedure established by the law", but this addition is missing from No. 18 with respect to the chairman of the supreme court.

As is well-known, it is of the utmost importance in any democratic State that judges can perform their duties in absolute independence, i.e. independent in particular of government and Parliament. The mere possibility of dismissal for no other reason than that executive or legislative authorities are displeased at a judicial sentence would impair the independence of judges.

Further examination of the dismissal procedures is therefore necessary.

Article 17 No. 24

24. To give the Supreme Rada the right to initiate referendums does not make much political sense. In using this power the legislature would abandon its own proper function. It would be better to give this possibility to the Head of State, who could use it in exercising his functions as an arbitrator. This is the practice of the French Fifth Republic.

Article 17 No. 27

25. This veto power is not justified. The assessment of the constitutionality of decrees should be reserved to the Constitutional Court. One could foresee that the entry into force of decrees is suspended until the decision of the Constitutional Court.

Article 17 para. 4

26. The Russian experience shows the usefulness of this provision.

Article 17, paragraphe 15 — Article 24, paragraphe 9

21. Les fonctions du Conseil de la défense devraient être précisées afin d'éviter des conflits avec le Conseil de la sécurité nationale, qui est présidé par le Président (voir article 24, paragraphe 9).

Article 17, paragraphe 17

22. Il est contestable que le président de la Cour constitutionnelle puisse être élu par le Conseil suprême. L'expérience des Etats post-totalitaires a montré que cela risque de politiser (et de retarder) non seulement la mise en place mais aussi le fonctionnement de la cour, et que cela place son président dans une position difficile et incompatible avec le statut et la finalité de la cour.

Article 17, paragraphes 18 et 20

23. La désignation des plus hauts juges est d'une importance particulière. Une question se pose lorsque nous observons que, aux paragraphes 18 et 20, l'autorité chargée de les désigner (le parlement) a aussi compétence pour les limoger. Il est précisé, au paragraphe 20, que cela doit se faire conformément à la procédure établie par la loi, mais cette précision est omise au paragraphe 18 pour ce qui est du président de la Cour suprême.

Chacun sait qu'il est de la plus haute importance, dans tout Etat démocratique, que les juges puissent s'acquitter de leurs fonctions d'une manière totalement indépendante, c'est-à-dire d'une manière indépendante en particulier du gouvernement et du parlement. La seule possibilité d'un licenciement sans autre raison que le mécontentement du pouvoir exécutif ou législatif devant un jugement rendu par le pouvoir judiciaire porterait atteinte à l'indépendance des juges.

Les procédures de licenciement doivent donc faire l'objet d'un examen plus approfondi.

Article 17, paragraphe 24

24. L'attribution au Conseil suprême du droit de procéder à des référendums n'a pas beaucoup de sens sur le plan politique. En y ayant recours, la législature renoncerait à ses propres fonctions. Il serait préférable de donner cette possibilité au chef de l'Etat, qui pourrait l'utiliser lorsqu'il exerce ses fonctions d'arbitre. Telle est la pratique observée par la V^e République en France.

Article 17, paragraphe 27

25. Ce pouvoir de veto ne se justifie pas. L'évaluation de la constitutionnalité des décrets devrait être réservée à la Cour constitutionnelle. On pourrait prévoir de suspendre l'entrée en vigueur des décrets en attendant la décision de la Cour constitutionnelle.

Article 17, alinéa 4

26. L'expérience russe montre l'utilité de cette disposition.

Relations between the supreme rada and the government

- Art. 17 para. 23, Art. 22, Art. 33

27. The accent should be put on the collective responsibility of the government, including the possibility of a vote of no-confidence in some members. Such a vote should require an absolute majority and not an ordinary majority. Parliamentary control mechanisms, like questions and interpellations, should be foreseen, and these should be distinguished from sanction mechanisms, like a vote of no-confidence.

Consideration might be given to enabling the government to ask the Supreme Rada for a vote of confidence on certain occasions, e.g. when submitting a bill proposed by the government. This would allow the executive to put pressure on the Deputies and to pursue a continuous and effective policy.

The question whether the President should have the power to dissolve the Rada when it passes a vote of no-confidence in the government is obviously very controversial. From press reports, it appears that the non-existence of such a possibility was a precondition of the Rada's acceptance of the constitutional Agreement.

There is also an ambiguity concerning the relationship between Articles 22 and 33. On the one hand, after the Programme of its Activity of the Government of Ukraine has been approved by the Supreme Rada of Ukraine, the latter may express its distrust of the Government of Ukraine no earlier than after one year of governmental activities but, on the other hand, Article 33 determines that whenever the draft State Budget of Ukraine has not been submitted in good time, the Supreme Rada of Ukraine may take a vote of non-confidence in all or particular members of the Cabinet of Ministers of Ukraine. Accordingly, the Supreme Rada of Ukraine could take a vote of no-confidence (i.e. distrust) within the one year "safe period" of governmental activities. It must be clarified as to whether Article 33 is an exception to Article 22, or whether it should be amended to be subject to Article 22.

D. *The President*

Article 23

28. The 2/3 majority of members of the Supreme Rada required to override a presidential veto on draft legislation is extremely high in the difficult period of transition of Ukraine. It may lead to a blocking of legislative activity and to conflicts between the institutions of the State. Consideration might be given to foreseeing that the veto can be overridden by an absolute majority of the members of the Supreme Rada.

Article 24 No. 2, Article 27 para. 2

29. According to Art. 24, No. 2, the President addresses messages to the people of Ukraine. According to Art. 27, para. 2, he may address messages on pressing issues to the people and to the Supreme Rada. Are these the same or different kinds of messages?

Relations entre le Conseil suprême et le gouvernement

— Article 17, paragraphe 23, article 22, article 33

27. L'accent devrait être placé sur la responsabilité collective du gouvernement, y compris sur la possibilité d'émettre un vote de défiance à l'égard de certains de ses membres. Un tel vote devrait exiger une majorité absolue et pas seulement une majorité ordinaire. Des mécanismes de contrôle parlementaire, questions et interpellations par exemple, devraient être prévus, et devraient être distingués des mécanismes de sanction comme les votes de défiance.

On pourrait envisager d'autoriser le gouvernement à demander au Conseil suprême de procéder à un vote de confiance à certaines occasions, par exemple lors de la présentation d'un projet de loi proposé par le gouvernement. Cela permettrait à l'exécutif d'exercer une pression sur les députés et de poursuivre leur action avec régularité et efficacité.

La question de savoir si le Président devrait être habilité à dissoudre le Conseil suprême lorsqu'il refuse de donner sa confiance au gouvernement est de toute évidence sujette à controverse. Il ressort des comptes rendus parus dans la presse que l'exclusion de cette possibilité était une condition *sine qua non* à l'acceptation de l'accord constitutionnel par le Conseil suprême.

Une certaine ambiguïté entoure aussi les rapports entre les articles 22 et 33. D'une part, lorsque le programme d'activité du Gouvernement de l'Ukraine a été approuvé par le Conseil suprême, ce dernier ne peut exprimer sa défiance à l'égard du gouvernement qu'un an au moins après l'entrée en fonction du gouvernement mais, d'autre part, l'article 33 prévoit que chaque fois que le projet de budget de l'Etat ukrainien n'a pas été présenté dans des délais suffisants, le Conseil suprême de l'Ukraine peut voter la défiance à l'égard de tous ou de certains membres du Conseil des ministres. En conséquence, le Conseil suprême pourrait voter la défiance dans un délai inférieur au «délai de sécurité» d'un an prévu pour les activités gouvernementales. Il conviendrait de préciser si l'article 33 constitue une exception à l'article 22 ou s'il devrait être modifié pour être subordonné aux dispositions de l'article 22.

D. *Le Président*

Article 23

28. La majorité des deux tiers des membres du Conseil suprême qui est requise pour annuler un veto présidentiel relatif à un projet de loi est extrêmement forte dans la difficile période de transition que traverse l'Ukraine. Cela pourrait conduire à une paralysie de l'activité législative et à des conflits entre les institutions de l'Etat. On pourrait envisager la possibilité d'annuler un veto à la majorité absolue des membres du Conseil suprême.

Article 24, paragraphe 2; article 27, paragraphe 2

29. Conformément au paragraphe 2 de l'article 24, le Président adresse des messages au peuple ukrainien. Conformément au paragraphe 2 de l'article 27, il peut adresser des messages au peuple et au Conseil suprême sur des questions pressantes. S'agit-il des mêmes messages ou de messages différents?

Article 24 No. 6

30. The President of Ukraine is empowered to repeal acts by central and local public executive authorities including acts by executive authorities of the Autonomous Republic of Crimea whenever they are incompatible with the Constitution and laws of Ukraine, or with decrees and orders of the President of Ukraine. This means that the President is exercising a similar role to a court of the highest instance that deals only with questions of law and not of fact. The problem is that there is no judicial control over the President of Ukraine (i.e. executive). Traditional democratic constitutions grant this power to the judiciary, i.e. to constitutional or ordinary courts.

Article 24 para. 2

31. This provision merits approval, but it should be qualified "except cases provided for by the Constitution of the Ukraine and the present law" (cf. Art. 17 para. 4).

Article 25

32. The President of Ukraine is empowered to interpret decrees and orders which are binding on the whole territory of Ukraine. This could be acceptable if the interpretation only bound the executive. The right to bind the private sector (namely the citizens of Ukraine) properly belongs only to the judiciary. See also above the remarks on Art. 17 N°. 1.

The power given to the President in para. 2 to enact decrees on economic reform not governed by the applicable legislation seems necessary in view of the Russian experience.

E. *The Judiciary*

Article 38 - The Constitutional Court

33. In envisaging the future role of the Ukrainian Constitutional Court one has to be very prudent. From a strictly legal point of view, the Court cannot be entrusted with the task of checking the implementation of the constitutional Agreement. This would put the Court in the difficult position of dealing with a statute which contradicts the Constitution in force without having been approved by the majority required for the amendment of the Constitution. Moreover, as far as the matter of the organisation and functioning of the State power and local self-government in Ukraine is concerned, an intervention of the Constitutional Court is apparently unthinkable. The provisions of the Agreement establish a constitutional equilibrium between the supreme bodies of the State which is based only on the search for political compromises and is aimed at avoiding the danger of a showdown between them. This construction is confirmed by the RIA news agency which has emphasised that Parliament, or rather the Supreme Rada, approved the agreement without adopting "articles giving the president the right to disband Parliament and setting out a procedure for the impeachment of the President".

Article 24, paragraphe 6

30. Le Président de l'Ukraine est habilité à annuler les décisions du pouvoir exécutif aux niveaux central et local, y compris les décisions prises par les autorités exécutives de la République autonome de Crimée, chaque fois qu'elles sont incompatibles avec la Constitution et la législation de l'Ukraine, ou avec ses propres décrets et ordonnances. Cela signifie que le Président exerce un rôle analogue à celui d'un tribunal de la plus haute instance qui traiterait uniquement de questions de droit et non de questions de fait. La difficulté tient à ce que le Président de l'Ukraine (c'est-à-dire l'exécutif) n'est soumis à aucun contrôle judiciaire. Les constitutions démocratiques traditionnelles confèrent cette fonction au pouvoir judiciaire, c'est-à-dire aux tribunaux constitutionnels ou ordinaires.

Article 24, paragraphe 2

31. Cette disposition mérite d'être approuvée, mais elle devrait être assortie d'une réserve indiquant qu'elle ne s'applique pas dans certains cas prévus par la Constitution de l'Ukraine et la législation actuelle (voir article 17, alinéa 4).

Article 25

32. Le Président de l'Ukraine est habilité à interpréter les décrets et les ordonnances qui ont force obligatoire sur l'ensemble du territoire de l'Ukraine. Cela pourrait être acceptable si l'interprétation liait uniquement l'exécutif. Le droit de lier le secteur privé (à savoir les citoyens de l'Ukraine) n'appartient normalement qu'au pouvoir judiciaire. Voir plus haut les observations concernant l'article 17, paragraphe 1.

Les dispositions du paragraphe 2, qui donnent au Président le pouvoir de promulguer des décrets en matière de réforme économique échappant à la législation applicable semblent nécessaires, compte tenu de l'expérience russe.

E. *Le pouvoir judiciaire*

Article 38 – La Cour constitutionnelle

33. Il faut être très prudent lorsque l'on envisage le rôle de la Cour constitutionnelle de l'Ukraine à l'avenir. D'un point de vue strictement juridique, cette cour ne saurait être chargée de vérifier l'application de l'accord constitutionnel, ce qui la placerait dans la position délicate où elle aurait à traiter d'un statut qui contredit la Constitution en vigueur, mais sans avoir été approuvé par la majorité qu'exige la révision de la Constitution. En outre, en ce qui concerne l'organisation et le fonctionnement du pouvoir de l'Etat et de l'autonomie locale en Ukraine, une intervention de la Cour constitutionnelle semble impensable. Les dispositions de l'accord instituent entre les organes suprêmes de l'Etat un équilibre constitutionnel fondé uniquement sur la recherche de solutions de compromis sur le plan politique et destiné à éviter les risques de confrontation entre ces organes. Cette interprétation est confirmée par l'Agence de presse RIA, qui a souligné que le parlement, ou plutôt le Conseil suprême, avait approuvé l'accord sans adopter d'articles conférant au Président le droit de dissoudre le parlement et énonçant une procédure pour la mise en accusation du Président.

The interpretation of the Ukrainian situation would have been certainly different if we had accepted the idea that because of the difficulties of a quick approval of the new Constitution, the constitutional Agreement was approved with the purpose of completely substituting it for the old Constitution. In this case the implementation of the Agreement would not have depended on a political compromise between the supreme bodies of the State, but the interested authorities would have pretended to vest it with a legal force which it does not have. The Agreement should have been read as the new Ukrainian Constitution, and the Constitutional Court should not have been obliged to stick to the old hierarchy of the sources of law and to recognise the primary role of the old Constitution.

But even in this hypothesis the Constitutional Court should have been entrusted with the task of the judicial review of legislation on the basis of the old constitutional provisions concerning fundamental rights and freedoms. In any case, the content of the constitutional Agreement does not allow for an interpretation which implies the abrogation of the articles of the old Constitution in the matter.

Article 42

34. This article determines the appointment of judges. One clear constitutional principle of judicial independence is the term for which judges are appointed. The term should be of sufficient length so as to promote and protect the independence of judges. The constitutional Agreement does not provide such protection. See also the remarks on Art. 17 paras. 18-20 above.

Article 43

35. Within the norms of a democracy, the Prosecutor General's office is only empowered to act on behalf of the State.

The Office does not play any legal role in private law. Accordingly, article 43 (7) is inconsistent with this principle. The prosecutor's powers should be confined to protecting material and other interests of the State. Usually only the courts are empowered to protect rights of citizens and legal persons (including the State).

Article 43 (2) is unclear as to the extent of the Prosecutor General's power: is his power confined to breaches of the legislation before the courts or does it extend to control of court decisions.

Article 43 is proof that the legal position and power of the Prosecutor General's Office is substantially the same as it was under the totalitarian regime.

Article 45

36. This article is inconsistent with article 43, in relation to the independence of prosecutors. They could not be independent on the one hand and be subordinated to the Prosecutor General's Office on the other.

L'interprétation de la situation en Ukraine aurait certainement été différente si nous avions accepté l'idée qu'en raison des difficultés que soulevait une approbation rapide de la nouvelle Constitution, l'accord constitutionnel avait été approuvé dans le dessein de le substituer entièrement à l'ancienne Constitution. Dans ce cas, l'application de l'accord n'aurait pas été subordonnée à une transaction politique entre les organes suprêmes de l'Etat, mais les autorités intéressées auraient prétendu lui conférer une force juridique qu'il n'a pas. L'accord aurait dû être considéré comme la nouvelle Constitution ukrainienne, et la Cour constitutionnelle ne devrait pas avoir été obligée de s'en tenir à l'ancienne hiérarchie des sources du droit et de reconnaître la primauté de l'ancienne Constitution.

Mais même dans cette hypothèse, la Cour constitutionnelle aurait dû se voir confier la tâche de la révision judiciaire de la législation sur la base des anciennes dispositions constitutionnelles ayant trait aux libertés fondamentales. En tout état de cause, la teneur de l'accord constitutionnel ne saurait être interprété comme entraînant l'abrogation des articles de l'ancienne Constitution sur la question.

Article 42

34. Cet article régit la nomination des juges. L'un des principes constitutionnels très clairs de l'indépendance judiciaire concerne la durée du mandat des juges: ce mandat devait être suffisamment long pour encourager et protéger leur indépendance. L'accord constitutionnel ne garantit pas cette protection. Voir aussi les observations relatives à l'article 17, paragraphes 18 à 20.

Article 43

35. Dans les limites des normes démocratiques, le Bureau du Procureur général ne peut agir qu'au nom de l'Etat.

Ce Bureau ne joue aucun rôle juridique en droit privé. En conséquence, l'article 43 (7) est incompatible avec ce principe. Les pouvoirs du procureur devraient être limités à la protection des intérêts matériels et autres de l'Etat. Seuls les tribunaux sont généralement habilités à protéger les droits des citoyens et des personnes morales (y compris l'Etat).

L'article 43 (2) n'est pas clair quant à l'étendue des pouvoirs du Procureur général: ces pouvoirs se limitent-ils aux infractions de la législation portées devant les tribunaux ou s'étendent-ils au contrôle des décisions des tribunaux.

L'article 43 fournit la preuve que la position et le pouvoir juridiques du bureau du Procureur général sont essentiellement les mêmes que ce qu'ils étaient sous le régime totalitaire.

Article 45

36. Cet article est incompatible avec l'article 43 pour ce qui est de l'indépendance des procureurs. Ils ne peuvent être à la fois indépendants et subordonnés au Bureau du Procureur général.

F. *Local self-government*

Article 47 et seq.

37. There is no clear consecration of the principle of local self-government. These provisions give the impression that local authorities remain in a similar position to that obtaining during the Soviet period, as part of the executive. It has to be admitted that questions of local self-government in post-Soviet States have not been clarified in constitutional law theory, and that the implementation of local self-government is difficult in these States due to a lack of experience.

G. *Conclusion*

The present constitutional situation in Ukraine is ambiguous, and this ambiguity is reflected in some of the remarks made. The only possible solution was indeed the establishment of a transitory order with the partial suspension of the old constitutional bodies and the political commitment of the supreme constitutional bodies to stick to the provisional rules adopted by the Parliament without a qualified majority. The conclusion of the Agreement and continued respect for its provisions under the conditions of political struggle during a period of transition marked by confrontation between the executive and the legislative is an example of an attempt to reach a civilised legal solution to problems, in the interest of the aims set out in the preamble. If the present situation does not meet all the standards of the Council of Europe, the signature and the ratification (with internal implementation) of international instruments in the field of human rights and fundamental freedoms by Ukraine would help the establishment of a constitutional order in Ukraine coherent with the obligation of implementing democracy, fundamental rights and freedoms and the rule of law.

The text of the constitutional Agreement bears the marks of a period of transition, in many respects it represents admirable progress, but the future content of the constitutional law of Ukraine will have to provide for more stable and principled solutions, in particular:

- the human rights chapter will have to be in conformity with international standards.
- the independence of the judiciary will have to be fully safeguarded, and judicial functions reserved to the courts.
- the powers of prosecutors will have to be reduced to a level found in Western Europe.
- there will have to be stable rules which cannot be changed unilaterally by the participants in the political process.

F. *Autonomie locale*

Article 47 et suivants

37. Le principe de l'autonomie locale n'est pas clairement énoncé. Ces dispositions donnent l'impression que les autorités locales sont dans la même situation que pendant la période soviétique, c'est-à-dire qu'elles font partie de l'exécutif. Il faut convenir que les questions d'autonomie locale dans les Etats postsoviétiques n'ont pas été précisées dans la théorie du droit constitutionnel et que l'application de l'autonomie locale est malaisée dans ces Etats, faute d'expérience.

G. *Conclusion*

La situation constitutionnelle qui règne actuellement en Ukraine est ambiguë, et cette ambiguïté ressort de certaines des observations formulées. La seule solution possible consiste en fait à mettre en place un ordre transitoire en suspendant partiellement les anciens organes constitutionnels et à obtenir des organes constitutionnels suprêmes qu'ils aient la volonté politique de respecter les règles provisoires qui ont été adoptées par le parlement sans majorité qualifiée. La conclusion de l'accord et le respect persistant de ses dispositions dans l'atmosphère de lutte politique qui caractérise une période de transition marquée par des affrontements entre l'exécutif et le législatif est un exemple d'effort pour trouver une solution juridique civilisée aux problèmes rencontrés, et cela dans le respect des objectifs énoncés dans le préambule. Si la situation actuelle ne répond pas à toutes les normes du Conseil de l'Europe, la signature et la ratification par l'Ukraine (accompagnées d'une application sur le plan interne) d'instruments internationaux relatifs aux droits de l'homme et aux libertés fondamentales contribueraient à instaurer dans le pays un ordre constitutionnel qui soit compatible avec l'obligation de respecter la démocratie, les droits de l'homme et les libertés fondamentales ainsi que la primauté du droit.

Le texte de l'accord constitutionnel porte les marques d'une période de transition et constitue à bien des égards un progrès remarquable, mais les dispositions qui formeront le droit constitutionnel de l'Ukraine devront offrir des solutions reposant sur des principes plus stables et plus solides, et plus particulièrement:

- le chapitre des droits de l'homme devra être conforme aux normes internationales;
- l'indépendance du pouvoir judiciaire devra être pleinement garantie et les fonctions judiciaires devront être réservées aux tribunaux;
- les pouvoirs des procureurs devront être ramenés au niveau observé en Europe occidentale;
- des règles stables devront être énoncées qui ne pourront pas être modifiées unilatéralement par les participants au processus politique.

A P P E N D I X

MEMORANDUM

CONSTITUTIONAL AGREEMENT
BETWEEN THE VERKHOVA RADA OF UKRAINE
AND THE PRESIDENT OF UKRAINE

by
Oleksander LAVRYNOVYCH
Deputy Chairman of the Parliamentary Committee
on Legal Policy and Judicial Reform

INTRODUCTION

The Constitutional Agreement between the Verkhovna Rada of Ukraine and the President of Ukraine is a political and legal act, which was signed on June 8, 1995 as a compromise settlement of the problem of irregularity or contradiction of main legal norms of the societal development and of the problem of the division between functional responsibilities and rights of different branches of power.

This political and legal act consists of two separate parts, which have different applications. The first part is a text of the "Law on State Power and Local Self-Government in Ukraine". The second part consists of the articles of an agreement between the Verkhovna Rada, as legislative branch, and the President of Ukraine, as the Head of the State and the head of the executive power.

The first part can be considered as a Small Constitution of the State.

The second part is an actual agreement between two independent and interactive subjects, which have come to an agreement on several concrete points:

- application of the "Law on State Power and Local Self-Government in Ukraine" as the highest normative act of the state until the adoption of a new Constitution of Ukraine;
- a timetable for the accomplishment of the preparatory work and adoption of the Constitution of Ukraine;
- a procedure for the adoption of the Constitution of Ukraine.

The Constitutional agreement is not a normative act of the legislative power and, therefore, its adoption cannot be considered from the point of view of the requirements for parliamentary procedures.

This is a joint act of the legislative and executive powers adopted according to a special procedure.

Along with legal problems, the Constitutional agreement settled an important political dilemma. It played a role of a compromise between the conflicting branches of power, which objectively reflected the escalation of social tensions when a serious worsening of the situation was taking place within both the state and self-governing structures.

The content of the agreement was determined by the existing crisis in the Ukrainian society, and thus it should be viewed as a means of settlement of the controversy, which could have initiated social upheavals.

Therefore, the Constitutional agreement should be viewed in the context of political situation in Ukraine. It is necessary to distinguish three separate aspects of the agreement: the content of the "Law on State Power and Local Self-Government in Ukraine", the content of articles of the Agreement itself, and the procedure of the Agreement's adoption.

MAIN ISSUES REGULATED BY THE "LAW ON STATE POWER AND LOCAL SELF-GOVERNMENT IN UKRAINE"

The most important is that the law clearly regulates the division of power among the legislative, executive and juridical branches (Art.3), and establishes in Ukraine the local self-government as a territorial self-organization of citizens (Art.4).

Functioning as the Small Constitution of Ukraine, the Law confirms the priority of human rights and freedoms. At the same time, the Law establishes the pluralism of social life in Ukraine and protection of the private property equal to the protection of the public property (Art.5), which was the only kind of property defined in the previous Constitution.

The establishment of a mixed majoritarian-proportional system for the next parliamentary elections is another step forward, which will facilitate the consolidation of a stable democracy through the development of influential political parties (Art.6).

The adoption of the Law has also allowed for considerable steps towards reforming the judicial system of Ukraine and strengthening of the independence of courts (Art.27,24). This is guaranteed by a new procedure of appointment and dischargement of judges, as well as by the independent budget assignments for courts (Art.37).

In addition, the law clearly defines the responsibilities of the Verkhovna Rada as a single legislative branch of the state; and of the President of Ukraine as the Head of State and head of the executive power. The law also defines the principles of functioning of the bodies of local self-government.

Taking into account the fact that the content of the Law is a result of a compromise reached through the acceptance of each article by a specially created joint Presidential-Parliamentarian Commission, it leaves some problems to be solved in the course of preparation of a full-scale Constitution of Ukraine.

SUMMARY OF THE AGREEMENT'S ARTICLES

The Agreement stipulates that all bodies of the state power and local self-government are organized and function on the principles defined by the "Law on State Power and Local Self-Government in Ukraine" until the adoption of the new Constitution of Ukraine, which has to be adopted within one year.

The Agreement envisages that the new Constitution of Ukraine will be adopted by the all-

Ukrainian referendum. The referendum will consider a draft of the Constitution agreed between the President and the Verkhovna Rada, which should guarantee a peaceful accomplishment of the constitutional process.

SPECIFICS OF THE PROCEDURE OF ADOPTION OF THE CONSTITUTIONAL AGREEMENT

By submitting to the Verkhovna Rada in December 1994 a draft of the Constitutional Law "On State Power and Local Self-Government in Ukraine", the President of Ukraine appeared as an initiator in the settlement of irregularities and contradictions in the legislation regarding the functioning of the state power in Ukraine.

After the Verkhovna Rada adopted an outline of this Law by a simple majority (205 votes) in December 1994, the President and the Verkhovna Rada created a joint Parliamentary-Presidential Commission, which was working on a draft law for its final approval by the Verkhovna Rada. In this way a precedent for a joint preparation of a normative act was created.

In May 1995, the draft Law "On State Power and Local Self-Government in Ukraine", prepared by the joint Commission, was adopted in principle by a simple majority (219 votes) of the Verkhovna Rada of Ukraine.

In order to avoid a collision between the norms of the "Law on State Power and Local Self-Government in Ukraine" and the Constitution of Ukraine, which was adopted in the Ukrainian SSR in 1978 and then transformed with amendments and additions into the Constitution of Ukraine according to the "Law on Succession of Ukraine" (adopted by simple majority in September 1991), a group of the deputies initiated the signing of a Constitutional agreement between the Verkhovna Rada and the President.

The text of the agreement was reviewed at the Plenary meeting of the Verkhovna Rada of Ukraine and was adopted by a simple majority (240 votes). After that, the Agreement was signed by the deputies, Chairman of the Verkhovna Rada, and the President.

CONCLUSIONS

The Verkhovna Rada and the President of Ukraine - two subjects of the Constitutional Law, who received their authority from the people in a result of a free and direct elections - have realized their authority delegated to them by the Ukrainian nation as a single source of power.

This allows to consider the Constitutional agreement as a completely legitimate act, directed at the settlement of a systemic crisis in Ukraine, at the establishment of the rule of law in a democratic society, and at the accomplishment of the process of preparation and adoption of the new full-scale Constitution of Ukraine.

A N N E X E

MEMORANDUM

**ACCORD CONSTITUTIONNEL CONCLU
ENTRE L'ASSEMBLÉE SUPRÊME (VERKHOVNA RADA)
ET LE PRÉSIDENT DE L'UKRAINE**

**par
Oleksander LAVRINOVITCH
Vice-président de la commission parlementaire
de la politique juridique et de la réforme judiciaire**

Introduction

L'Accord constitutionnel signé le 8 juin 1995 entre l'Assemblée suprême et le Président de l'Ukraine est un acte politique et juridique qui représente une solution de compromis pour éliminer les irrégularités ou les contradictions dans les principales normes juridiques régissant l'évolution de la société, et préciser la répartition des responsabilités et des droits entre les différentes instances du pouvoir.

Cet acte politique et juridique comprend deux parties distinctes, qui ont chacune une application différente: d'une part, la «loi relative au pouvoir de l'Etat et à l'autonomie locale en Ukraine» et, de l'autre, les articles d'un accord conclu entre l'Assemblée suprême (en tant que pouvoir législatif) et le Président de l'Ukraine (en tant que chef de l'Etat et responsable de l'exécutif).

La première partie peut être considérée comme une petite Constitution de l'Etat.

La seconde est un véritable accord conclu entre deux sujets indépendants mais agissant de concert, qui se sont entendus sur plusieurs points concrets:

— l'application de la «loi relative au pouvoir de l'Etat et à l'autonomie locale en Ukraine» comme texte normatif suprême de l'Etat jusqu'à l'adoption d'une nouvelle Constitution de l'Ukraine;

— un calendrier pour l'accomplissement des travaux préparatoires et l'adoption de la Constitution;

— une procédure pour l'adoption de la Constitution.

L'Accord constitutionnel n'étant pas un acte normatif du pouvoir législatif, son adoption ne peut être considérée sous l'angle des exigences de la procédure parlementaire.

Il s'agit d'un acte conjoint des pouvoirs exécutif et législatif adopté selon une procédure spéciale.

Outre des problèmes juridiques, l'Accord constitutionnel a réglé un dilemme politique important, en jouant un rôle de compromis dans le conflit entre les instances du pouvoir, qui reflétait objectivement la montée de la tension sociale due à une grave détérioration de la situation au sein des structures tant de l'Etat que de l'autonomie locale.

Son contenu ayant été déterminé par la crise que traverse la société ukrainienne, il doit être considéré comme un moyen de régler une controverse qui aurait pu déclencher des troubles sociaux.

Il doit donc être envisagé dans le contexte de la situation politique de l'Ukraine et comporte trois aspects bien distincts: le contenu de la «loi relative au pouvoir de l'Etat et à l'autonomie locale en Ukraine», la teneur de ses articles propres et la procédure relative à son adoption.

**Principales questions régies par
la «loi relative au pouvoir de l'Etat
et à l'autonomie locale en Ukraine»**

Le point le plus important est que la loi régit la répartition des compétences entre les pouvoirs exécutif, législatif et judiciaire (article 3) et qu'elle définit l'autonomie locale comme le pouvoir reconnu aux citoyens de s'administrer eux-mêmes sur un territoire donné (article 4).

Fonctionnant comme la «petite» Constitution de l'Ukraine, elle confirme la priorité des droits de l'homme et des libertés fondamentales. Dans le même temps, elle prévoit le pluralisme de la vie sociale en Ukraine et protège la propriété privée au même degré que la propriété publique (article 5), qui était la seule forme de propriété définie par la Constitution antérieure.

L'institution d'un système électoral mixte majoritaire/ proportionnel pour les prochaines élections législatives est un autre progrès, qui facilitera la stabilisation de la démocratie par l'émergence de partis politiques influents (article 6).

L'adoption de la loi a aussi permis d'avancer considérablement sur la voie d'une réforme du système judiciaire et du renforcement de l'indépendance des tribunaux (articles 27, 24), qui est garantie par une nouvelle procédure de désignation et de révocation des juges, ainsi que par la définition d'enveloppes budgétaires propres pour les tribunaux (article 37).

En outre, la loi définit clairement les responsabilités de l'Assemblée suprême — comme instance législative unique de l'Etat — et du Président de l'Ukraine — comme chef de l'Etat et responsable du pouvoir exécutif. Elle définit aussi les principes de fonctionnement des organes de l'autonomie locale.

Sa teneur étant le fruit d'un compromis obtenu après acceptation de chaque article par une commission mixte présidentielle et parlementaire spécialement créée à cette fin, il restera certains problèmes à résoudre lors de l'élaboration de la véritable Constitution de l'Ukraine.

Résumé des articles de l'accord

L'accord stipule que toutes les instances de l'Etat et des administrations autonomes locales sont organisées et gérées selon les principes repris dans la «loi relative au pouvoir de l'Etat et à l'autonomie locale en Ukraine» jusqu'à l'adoption de la nouvelle Constitution, qui doit intervenir dans un délai d'un an.

Il prévoit que cette nouvelle Constitution sera adoptée par la voie d'un référendum organisé dans toute l'Ukraine. Celui-ci portera sur un projet adopté à la fois par le Président et par l'Assemblée suprême, ce qui devrait garantir un déroulement sans heurt du processus constitutionnel.

Caractéristiques de la procédure d'adoption de l'accord constitutionnel

En soumettant en décembre 1994 un projet de loi constitutionnelle sur «le pouvoir de l'Etat et l'autonomie locale en Ukraine» à l'Assemblée suprême, le Président de l'Ukraine a manifesté sa volonté d'éliminer les irrégularités et contradictions de la législation concernant le fonctionnement du pouvoir de l'Etat dans ce pays.

Après l'approbation d'une première esquisse par l'Assemblée suprême à la majorité simple (205 voix) en décembre 1994, le Président et l'Assemblée suprême ont créé une commission mixte présidentielle et parlementaire qui a élaboré un projet de loi en vue de son adoption par l'Assemblée suprême. Ainsi a été créé un précédent pour l'élaboration conjointe d'un acte normatif.

En mai 1995, le projet de «loi relative au pouvoir de l'Etat et à l'autonomie locale en Ukraine» élaboré par la commission mixte a été adopté dans son principe à la majorité simple (219 voix) par l'Assemblée suprême.

Pour éviter un conflit de normes entre la loi et la Constitution adoptée par la RSS d'Ukraine en 1978, puis transformée par des amendements et des adjonctions en la Constitution de l'Ukraine conformément à la «loi relative à la succession de l'Ukraine» (adoptée à la majorité simple en septembre 1991), un groupe de députés a lancé l'idée de la conclusion d'un accord constitutionnel entre l'Assemblée suprême et le Président.

Le texte de cet accord, examiné en session plénière par l'Assemblée suprême, a été adopté à la majorité simple (240 voix). Il a ensuite été signé par les députés, par le Président de l'Assemblée suprême et par le Président.

Conclusions

L'Assemblée suprême et le Président de l'Ukraine — deux sujets de droit constitutionnel, qui ont reçu leur autorité du peuple à l'issue d'élections libres et directes — ont exercé le mandat qui leur a été confié par la nation ukrainienne, source unique de leur pouvoir.

L'accord constitutionnel peut donc être considéré comme un acte pleinement légitime visant à résoudre la crise systémique du pays, à affirmer la prééminence du droit dans une société démocratique et à permettre la mise en route du processus d'élaboration et d'adoption de la nouvelle véritable Constitution de l'Ukraine.

Eng. only

CONSTITUTIONAL AGREEMENT
BETWEEN THE SUPREME RADA OF UKRAINE
AND THE PRESIDENT OF UKRAINE

on the basic principles
of the Organisation and functioning
of the state power and local-self government
in Ukraine
pending the adoption of
the new Constitution of Ukraine

The SUPREME RADA OF UKRAINE as the sole legislative body,
on the one hand, and

The PRESIDENT OF UKRAINE as the head of the State and the
head of the executive power, on the other hand,

hereinafter referred to as

The PARTIES,

which are the subjects of the constitutional law empowered
directly by the people,

Proceeding from the fact that:

- absence of a new democratic Constitution of Ukraine is an
impeding factor on the way to the implementation of
economic as well as political and legal-and-state reforms;
- non-adoption of the Law of Ukraine "On the Application of
the Law of Ukraine "On State Power and Local Self-
Government in Ukraine" and the Changes in the Constitution
(Fundamental Law) of Ukraine Resulting from its Adoption",
which is aimed at the implementation of the provisions of
the Law of Ukraine "On State Power and Local Self-
Government in Ukraine" makes impossible the proper
functioning of the whole state mechanism both at central
and local levels, impedes the implementation of economic
reforms, leads to further impoverishment of the major part
of the population and to the aggravation of social
conflicts;
- deep economic as well as political crisis leads to social
tension in the society, its criminalization and political
confrontation of power structures;

for the purpose of:

- avoiding unconformities between applicable rules of the
Constitution (the Fundamental Law) of Ukraine and rules
of the Law "On State Power and Local Self-Government in
Ukraine" and adapting this Law into the system of legal
acts, which determine the constitutional system in
Ukraine;
- promoting development and successful completion of the
constitutional process in Ukraine;

desirous to:

- ensure adequate protection of human and civil rights and
freedoms under crisis situation;
- create reliable guarantees for the existence of a
sovereign Ukraine, preserve its territorial integrity and
inviolability;

- reform State power on the principles of strict delimitation of functions between its legislative and executive branches as a necessary prerequisite for the overcoming of economic, social and constitutional crisis;
- create political and legal conditions for the implementation of economic reforms, maintenance of production, securing financial stability and social protection of the population;
- prevent political confrontation between power structures with its possible ruinous impact on the future of the country and the society as a whole;
- safeguard public peace and calm in Ukraine and create conditions for people to life and work in dignity and for the consolidation of all healthy forces of the society;

taking into account:

positive achievements gained in the long process of coordination of positions of the President of Ukraine and the Supreme Rada of Ukraine during the work on the draft Law "On State Power and Local Self-Government in Ukraine";

on the basis

of good will of the Parties, mutual concessions and compromise

Have agreed as follows:

Pending the adoption of the new Constitution of Ukraine public and local self-government authorities shall be organized and shall function on the principles set forth in the Law "On State Power and Local Self-Government in Ukraine" as approved by the Supreme Rada of Ukraine on 18 May 1995 by the majority vote of people's deputies of Ukraine, namely:

SECTION I

GENERAL PROVISIONS

Article 1

Ukraine shall be a democratic, social, law based State which is created on the basis of the enjoyment by the Ukrainian people of its sovereign right to self-determination and which expresses the will of the people and protects interests of its nationals.

The principle of the supremacy of law shall be applicable in Ukraine.

Article 2

The whole of the power in Ukraine shall belong to the people. The people is the sole source of the power and it exercises it both directly, i.e. through referendum, and through the system of public and local self-government authorities.

No one may assume the right to exercise State power.

Article 3

State power in Ukraine shall be built on the principle of its division into the legislature, the executive and the judiciary.

Article 4

Local self-government in Ukraine shall be exercised through territorial self-organization of citizens directly and through local self-government authorities. Local self-government authorities are elected directly by nationals of Ukraine residing within the territory of a city, town, village, respectively.

Article 5

All public and local self-government authorities in Ukraine shall exercise their functions based on the priority of human rights and freedoms. Securing these rights and freedoms, protecting human life, honour and dignity is the duty of the State.

Public life in Ukraine shall be based on the principles of political, economic and ideological pluralism.

Ownership in Ukraine shall be all-national, municipal, collective and private.

The law guarantees equal protection of all forms of ownership, socially oriented market economy.

SECTION II

SUPREME RADA OF UKRAINE

Article 6

The Supreme Rada of Ukraine shall be the sole legislative body of Ukraine which includes 450 people's deputies elected for 4 years on the basis of universal, equal and direct suffrage by secret ballot.

Regular elections of people's deputies of Ukraine are held in the first week of April after the expiration of four-year term of office of the previous membership of the Supreme Rada of Ukraine.

Next elections of people's deputies of Ukraine shall be conducted under mixed majoritarian-proportional system.

The procedure for holding elections of people's deputies of Ukraine, evaluation of their results and validation of credentials is governed by the Law of Ukraine "On Elections of People's Deputies of Ukraine."

The status of the people's deputy of Ukraine is specified by the Law of Ukraine "On the Status of the People's Deputy of Ukraine."

Article 7

The Supreme Rada of Ukraine shall conduct its proceedings in session.

Sessions of the Supreme Rada of Ukraine consist of plenary meetings of the Supreme Rada of Ukraine and of meetings of standing and other commissions held between plenary meetings.

The Supreme Rada of Ukraine holds the first session on the thirtieth day after the elections upon notification of the Chairman of the Central Electoral Commission.

Ordinary sessions are convened by the Bureau of the Supreme Rada of Ukraine. Extraordinary session are convened by the Chairman of the Supreme Rada of Ukraine, the Bureau of the Supreme Rada of Ukraine, on their initiative, or on the proposal of at least one third of the members of the Supreme Rada of Ukraine, or on the proposal of the President of Ukraine.

The Supreme Rada of Ukraine conducts its proceedings according to the Rules of Procedure of the Supreme Rada of Ukraine which have the force of a law.

Article 8

The Supreme Rada of Ukraine shall elect, from among people's deputies of Ukraine, standing commissions which, in accordance with the Law of Ukraine "On Standing Commissions of the Supreme Rada of Ukraine" and the Rules of Procedure of the Supreme Rada of Ukraine, carry out law-making activities, conduct preliminary consideration and preparation of questions falling within the competence of the Supreme Rada of Ukraine as well as exercise control of the compliance with the laws and enactments of the Supreme Rada of Ukraine. The Supreme Rada of Ukraine may set up, whenever it deems it necessary, parliamentary, inquiry, audit and other committees charged with

matters which fall within the competence of the Supreme Rada of Ukraine.

Article 9

The Bureau of the Supreme Rada of Ukraine shall include the Chairman, Vice-Chairmen of the Supreme Rada of Ukraine and chairmen of standing commissions, heads of parliamentary groups and factions in the Supreme Rada of Ukraine.

The Bureau of the Supreme Rada of Ukraine is accountable to the Supreme Rada of Ukraine and exercises its functions within the limits prescribed by the present Law.

Article 10

- The Bureau of the Supreme Rada of Ukraine shall:
- 1) convene ordinary sessions of the Supreme Rada of Ukraine;
 - 2) organize preparation of sessions of the Supreme Rada of Ukraine;
 - 3) coordinate activities of standing commissions of the Supreme Rada of Ukraine;
 - 4) assist people's deputies of Ukraine in fulfilling their mandate and provide them with necessary information;
 - 5) organize all-national discussion of bills of Ukraine and other acts of the Supreme Rada of Ukraine;
 - 6) organize publication of Ukrainian and Russian versions of laws of Ukraine and other acts adopted by the Supreme Rada of Ukraine, the Bureau of the Supreme Rada of Ukraine, promote publication of translations of the said acts to other languages which are used by the majority of population residing in particular areas of Ukraine.

The Bureau of the Supreme Rada of Ukraine adopts resolutions on matters falling within its competence.

Article 11

The Chairman and Vice-Chairmen of the Supreme Rada of Ukraine shall be elected from among people's deputies of Ukraine by secret ballot for the term of office of the Supreme Rada of Ukraine. The Supreme Rada of Ukraine may recall them at any time by secret ballot.

Article 12

The Chairman of the Supreme Rada of Ukraine shall:

- 1) provide general guidance in the preparation of matters before the Supreme Rada of Ukraine;

- 2) represent the Supreme Rada of Ukraine in relations with officials, public authorities and associations of citizens in Ukraine and abroad;
- 3) introduce to the Supreme Rada of Ukraine candidates for the election to the offices of Vice-Chairmen of the Supreme Rada of Ukraine and editor-chief of the newspaper of the Supreme Rada of Ukraine. Together with the President of Ukraine, submit names of candidates for the appointment to the office of the Chairman of the Constitutional Court of Ukraine by the Supreme Rada of Ukraine. Make proposals with regard to the candidates for the appointment of one half of judges of the Constitutional Court of Ukraine;
- 4) preside over meetings of the Supreme Rada of Ukraine, the Bureau of the Supreme Rada of Ukraine, sign acts adopted by the Supreme Rada of Ukraine and its Bureau, issue instructions;
- 5) provide overall administration of the apparatus of the Supreme Rada of Ukraine.

Vice-Chairmen of the Supreme Rada of Ukraine discharge specific functions assigned by the Chairman. One of them acts for the Chairman whenever he is absent or unable to discharge his functions.

Article 13

People's deputies of Ukraine shall work in the Supreme Rada of Ukraine on a permanent basis. They may not combine their parliamentary activities with any other office, except for teaching, scientific and other creative work.

Article 14

A people's deputy of Ukraine may not be prosecuted, arrested, or imposed an administrative sanction judicially without consent of the Supreme Rada of Ukraine.

Article 15

The right to initiate legislation in the Supreme Rada of Ukraine shall be vested in people's deputies of Ukraine, standing commissions of the Supreme Rada of Ukraine, President of Ukraine, Cabinet of Ministers of Ukraine, Supreme Court of Ukraine, Highest Arbitration Court of Ukraine.

President of Ukraine, taking into account the urgency of introducing legislative regulation in a given field of public relations, may request that the bills which he has submitted be considered on a priority basis. Such bills shall be included in the agenda of the meetings of the Supreme Rada of Ukraine as soon as they have been introduced and shall be considered

according to the Rules of Procedure of the Supreme Rada of Ukraine.

Article 16

The Supreme Rada of Ukraine shall consider and decide on matters which relate to State and public life and require regulation by laws of Ukraine, as well as discharge constituent and controlling functions provided for by the Constitution and the present Law.

The Supreme Rada of Ukraine, in addition to laws of Ukraine, adopts, within the limits of its competence, enactments, statements, declarations, addresses.

Article 17

The Supreme Rada of Ukraine shall:

- 1) adopt the Constitution of Ukraine, laws of Ukraine, codes and other codified acts, make revisions and amendments thereto, provide official interpretation thereof;
- 2) exercise control of the compliance with the Constitution of Ukraine, laws of Ukraine and enactments of the Supreme Rada of Ukraine;
- 3) exercise control in the field of the protection of human rights;
- 4) consider and take decision on the Program of activity of newly-formed Government of Ukraine;
- 5) consider, make revisions to and approve the State Budget of Ukraine submitted by the President of Ukraine and exercise control of its execution;
- 6) approve national programs of economic, social and national-cultural development as well as of environmental protection;
- 7) fix elections of the President of Ukraine, announce the act of his election, accept the resignation of the President of Ukraine;
- 8) consider annual and special reports of the President of Ukraine on domestic and foreign policy of Ukraine;
- 9) ratify, denounce international treaties of Ukraine or announce their conclusion or accession of Ukraine thereto;
- 10) take decision on its dissolution and fix, at the same time, early elections of people's deputies of Ukraine;
- 11) fix elections to local Radas;

- 12) approve overall structure, strength of the Armed Forces of Ukraine, the Frontier Forces of Ukraine, the National Guards of Ukraine, the Security Service of Ukraine and other military units created in accordance with the legislation of Ukraine;
- 13) approve decrees of the President of Ukraine on the declaration of state of war, the imposition of martial law in the whole territory of Ukraine or particular areas thereof in the event of military aggression or threat of military aggression against Ukraine, decisions on the termination or rescission thereof, conclusion of peace and on general or partial mobilization in the territory of Ukraine in case of the declaration of state of war;
- 14) approve decrees of the President of Ukraine on the imposition of state of emergency in the whole territory of Ukraine or particular areas thereof;
- 15) establish Defence Council of Ukraine and define the list of officials who are to be members thereof;
- 16) approve, upon submission of the President of Ukraine, membership of the Central Electoral Commission on the Elections of People's Deputies of Ukraine and the President of Ukraine;
- 17) appoint, upon joint submission of the Chairman of the Supreme Rada of Ukraine and the President of Ukraine, the Chairman of the Constitutional Court of Ukraine. Appoint one half of judges of the Constitutional Court of Ukraine. Administer the oath to judges of the Constitutional Court of Ukraine;
- 18) appoint, upon submission of the President of Ukraine, the Chairman of the Supreme Court of Ukraine, the Chairman of the Highest Arbitration Court of Ukraine, the Chairman of the Board of the National Bank of Ukraine and dismiss them;
- 19) appoint and dismiss the Prosecutor-General of Ukraine upon submission of the President of Ukraine;
- 20) appoint, upon submission of the President of Ukraine, judges of the Supreme Court of Ukraine and the Highest Arbitration Court of Ukraine and dismiss them according to the procedure established by the law;
- 21) reconsider laws which have been vetoed by the President of Ukraine;
- 22) take decisions on matters relating to administrative-territorial organization of Ukraine, name and rename human settlements in Ukraine;

- 23) may declare vote of non-confidence in all or particular members of the Government, which entails their resignation;
- 24) take, on its own initiative or on the initiative of at least three million electors, decisions on the holding of national referenda, announce results of national referenda;
- 25) exercise control of extending loans, economic and other assistance to foreign States by Ukraine as well as of the conclusion of agreements on State loans and credit and of the use of loans and credits which Ukraine has obtained from foreign States;
- 26) repeal legal acts of the Supreme Rada of the Autonomous Republic of the Crimea whenever they are incompatible with the Constitution and laws of Ukraine;
- 27) impose veto in respect of decrees of the President of Ukraine whenever they are incompatible with the Constitution and laws of Ukraine and appeal at the same time to the Constitutional Court of Ukraine;

The Supreme Rada of Ukraine shall submit the laws which it has adopted to the President of Ukraine for signature and promulgation.

The Supreme Rada of Ukraine considers and decides on matters which, under the applicable rules of the Constitution and the present Law, do not fall within the competence of public executive or judicial authorities, representative bodies and local self-government authorities and which are not such as to be decided exclusively by national referendum.

The Supreme Rada of Ukraine may not delegate its functions to other bodies except cases provided for by the Constitution of Ukraine and the present Law.

Article 18

Shall be specified exclusively by laws:

- 1) regulation of matters relating to human and civil rights and freedoms, nationality, status of stateless persons, refugees and aliens; principles of domestic and foreign policy, defence and State security; principles of social protection and health care of citizens, environmental protection, education, training and culture, science, protection of rights for intellectual property, marriage and family; rights of national minorities; matters relating the demography and migration; status of languages; activity of public associations and of mass media;

- 2) national taxes, types of charges and payments, fiscal, price and credit regulation, customs; legal status of ownership, property relations; principles of legal regulation of economic and social development of the State, entrepreneurship, labor, wildlife management and land use, matters relating to types, shapes, value and minting of coins; approval of the State Budget of Ukraine as well as revisions and report on its execution; State credit; status of special (free) economic zones; issuance of government securities; currency and hallmarks;
- 3) organization and functioning of the Supreme Rada of Ukraine, status of people's deputies of Ukraine, public executive authorities and local self-government authorities, principles of civil service, judicial system, legal proceedings, advocacy, notarial service, prosecution and institutions charged with the enforcement of sentences; acts which are crimes, administrative and disciplinary offenses, punishment therefor;
- 4) management of natural resources, energy system, all types of transport and communication; development of outer space;
- 5) establishment of units of weight, measures, time, standards and principles of State statistics and informatics;
- 6) organization and conduct of elections and referenda;
- 7) status of the capital, cities of national importance;
- 8) rules of diplomatic and consular relations, conclusion, denunciation of and accession to international treaties;
- 9) legal regime of State frontiers;
- 10) status of foreign military forces in the territory of Ukraine, procedure for the use of the Armed Forces of Ukraine outside the limits of Ukraine;
- 11) legal regime of martial law and of emergency;
- 12) establishment of State symbolics and their use; establishment of State awards, military, honorary and other special titles.

Other matters specified by the Constitution of Ukraine may also be subject to legislative regulation.

SECTION III

PRESIDENT OF UKRAINE

Article 19

The President of Ukraine shall be the head of the State and the head of the Executive in Ukraine.

The President of Ukraine as the head of the State represents Ukraine both in domestic and foreign relations.

The President of Ukraine as the head of the Executive exercises his power through the Government i.e. Cabinet of Ministers of Ukraine and the system of central and local public executive authorities headed by him.

Article 20

Any national of Ukraine aged from 35 to 65 who has been residing in Ukraine at least for last ten years before the election and who has knowledge of State language may be elected President of Ukraine.

Article 21

The President of Ukraine shall be elected by citizens of Ukraine for a period of 5 years on the basis of universal, equal and direct suffrage by secret ballot.

The procedure for holding elections of the President of Ukraine shall be established by the Law of Ukraine "On the Elections of the President of Ukraine."

Regular elections of the President of Ukraine are held in the first week of November after the expiration of 5 years since the date of his election.

The President of Ukraine takes his office not later than 15 days after the announcement of the election results. Upon taking his office, the President of Ukraine swears the oath at a plenary meeting of the Supreme Rada of Ukraine, text and procedure for swearing the oath being prescribed by the law.

The same person may not be President of Ukraine for more than two successive terms.

Article 22

The President of Ukraine, within one month after taking the office or from the date of resignation of previous Government, shall appoint Prime-Minister of Ukraine, form a new Government of Ukraine i.e. Cabinet of Ministers of Ukraine.

Within two months after its formation, the Cabinet of Ministers of Ukraine submits the Program of its activity to the

Supreme Rada of Ukraine for consideration. In case of a disagreement with the submitted Program the Supreme Rada of Ukraine may express the distrust to the Cabinet of Ministers.

After the Program of activity of the Government of Ukraine has been approved by the Supreme Rada of Ukraine the latter may express the distrust to the Government of Ukraine not earlier than after one year of governmental activities.

Article 23

The President of Ukraine shall sign and promulgate the laws of Ukraine which have been adopted by the Supreme Rada of Ukraine.

The laws are to be promulgated within two weeks since their texts have been received by the President of Ukraine from the Supreme Rada of Ukraine.

If the President of Ukraine disagrees with the content of the law as adopted by the Supreme Rada of Ukraine, he may, within the same period, exercise the right of veto in respect of such a law and transmit it together with his comments to the Supreme Rada of Ukraine for reconsideration.

If the Supreme Rada of Ukraine, during reconsideration, adopts that law again by a two-thirds majority vote of its actual membership, the President of Ukraine shall sign and promulgate that law within 10 days.

Article 24

The President of Ukraine shall:

- 1) be the guarantor of State sovereignty, independence, inviolability of frontiers, national security, territorial integrity of Ukraine, compliance with the Constitution and laws of Ukraine, human and civil rights and freedoms;
- 2) address messages to the people of Ukraine;
- 3) submit annual and special reports on the domestic and foreign policy of Ukraine to the Supreme Rada of Ukraine;
- 4) be the head of the system of public executive authorities of Ukraine;
- 5) establish, reorganize and dissolve ministries, departments, other central and local public executive authorities within the limits of State Budget of Ukraine, appoint (approve) and dismiss heads of such authorities;
- 6) repeal acts issued by central and local public executive authorities of Ukraine as well as acts issued by executive authorities of the Autonomous Republic of the Crimea whenever they are incompatible with the Constitution and

laws of Ukraine, decrees and orders of the President of Ukraine;

- 7) manage, within the limits of the law, State property;
- 8) be the Supreme Commander-in-Chief of the Armed Forces of Ukraine, appoint and dismiss high commanders of the Armed Forces of Ukraine, take measures to ensure defence potential of the State;
- 9) be the head of the Council of National Security of Ukraine and approve its personal membership;
- 10) submit draft State Budget of Ukraine and report on its execution to the Supreme Rada of Ukraine for consideration;
- 11) nominate, together with the Chairman of the Supreme Rada of Ukraine, a candidate for the appointment by the Supreme Rada of Ukraine to the office of the Chairman of the Constitutional Court; appoint one half of the judges of the Constitutional Court of Ukraine;
- 12) nominate candidates for the appointment by the Supreme Rada of Ukraine to the office of the Chairman of the Supreme Court of Ukraine, the Chairman of the Highest Arbitration Court of Ukraine, the Prosecutor-General of Ukraine, the Chairman of the Board of the National Bank of Ukraine, as well as for the appointment of judges of the Supreme Court of Ukraine and the Highest Arbitration Court of Ukraine;
- 13) appoint, upon submission of the Ministry of Justice of Ukraine as agreed with the Supreme Court of Ukraine and the Highest Arbitration Court of Ukraine, judges of general and arbitration courts;
- 14) implement foreign policy of Ukraine, conduct negotiations and sign international treaties of Ukraine; appoint and recall diplomatic representatives of Ukraine to foreign States and international organizations; accept letters of credence and of recall from diplomatic representatives of foreign States accredited to him;
- 15) submit proposals on the personal membership of the Central Electoral Commission on the Elections of People's Deputies of Ukraine and the President of Ukraine to the Supreme Rada of Ukraine for consideration;
- 16) take decision on the recognition of foreign States;
- 17) decorate with State awards of Ukraine, confer honorary titles of Ukraine; institute presidential awards and grant them;

- 18) grant high military, diplomatic and other special ranks and classes as well as grant military ranks to judges of military courts;
- 19) decide on matters concerning the acquisition of, and release from, citizenship of Ukraine, the granting of asylum to foreign citizens and stateless persons; take measures to protect interests of Ukrainian citizens outside Ukraine;
- 20) grant pardon to persons convicted by Ukrainian courts; issue decrees on amnesty;
- 21) take decision on the declaration of state of war, the imposition of martial law in the whole territory of Ukraine or particular areas thereof in the event of military aggression or threat of aggression against Ukraine, decision on the termination or rescission thereof, conclusion of peace and submit such issues to the Supreme Rada of Ukraine for consideration without delay as well as declare general or partial mobilization in the territory of Ukraine in case of the declaration of state of war;
- 22) declare, as may be necessary, particular areas of Ukraine zones of ecological emergency;
- 23) declare, in the whole territory of Ukraine or particular areas thereof, state of emergency in accordance with the Law of Ukraine "On State of Emergency;"
- 24) discharge other functions in accordance with the Constitution and laws of Ukraine.

The President of Ukraine may not delegate his functions to other persons or bodies.

Article 25

The President of Ukraine, within his competence, shall enact decrees and orders which are binding in the whole territory of Ukraine, make interpretation thereof.

The President of Ukraine enacts decrees on matters relating to economic reform not governed by the applicable legislation of Ukraine, which remain in effect pending the adoption of the respective laws.

Article 26

The President of Ukraine may fix a national referendum. Fixing a national referendum by the President of Ukraine shall be made on the grounds and in accordance with the procedure established by the Law of Ukraine "On National and Local Referenda."

Article 27

The President of Ukraine shall submit, to the Supreme Rada of Ukraine, annual and, at the request of the Supreme Rada of Ukraine, special reports on domestic and foreign policy of Ukraine not more often than once a year.

The President of Ukraine may address messages on pressing issues of public and State life to the people of Ukraine and the Supreme Rada of Ukraine.

Article 28

The President of Ukraine shall enjoy immunity. The President of Ukraine discharges his functions until the newly elected President takes the office.

SECTION IV

GOVERNMENT OF UKRAINE - CABINET OF MINISTERS OF UKRAINE

Article 29

The Government of Ukraine - the Cabinet of Ministers of Ukraine shall be central collegiate body of the Executive which is subordinated to the President of Ukraine and responsible to him.

The Government of Ukraine, in its activities, is guided by the Constitution, laws of Ukraine, enactments of the Supreme Rada of Ukraine, decrees and orders of the President of Ukraine, Program of governmental activities as approved by the Supreme Rada of Ukraine.

Article 30

The Prime Minister of Ukraine, acting within the limits specified by the President of Ukraine, shall organize and coordinate the activity of the Government - the Cabinet of Ministers of Ukraine.

Article 31

The Cabinet of Ministers of Ukraine, within its competence, shall:

- 1) ensure the implementation of domestic and foreign policy, the compliance with the Constitution and laws of Ukraine, enactments of the Supreme Rada of Ukraine, decrees and orders of the President of Ukraine;
- 2) take measures to ensure State sovereignty, national security and defence potential of Ukraine, its territorial integrity and economic independence;

- 3) implement measures to secure citizens' rights and freedoms, to ensure rule of law and legal order, to control crime, to safeguard ownership rights;
- 4) ensure the implementation of economic reforms, the establishment, development and stability of market economy, its social orientation, elaborate and execute national programs of social, economic and cultural development of Ukraine;
- 5) manage State property and determine forms of relationship with subjects of other forms of ownership;
- 6) ensure the implementation of governmental policy in the field of finances, taxes, prices and remuneration of labor, customs;
- 7) set up national and other development funds, funds for the elimination of consequences of natural disasters and catastrophes;
- 8) implement governmental policy in the field of education, science, culture and health;
- 9) be responsible for the drafting of the State Budget of Ukraine and the execution of the State Budget of Ukraine;
- 10) be responsible for the implementation of governmental policy in the field of social protection of citizens;
- 11) be responsible for the state of natural environment, ecological security and wildlife management, for the production and the marketing of environmentally sound food products of high quality, top-quality goods and for the provision of objective information to the population in this field;
- 12) streamline and coordinate activities of ministries and other central and local public executive authorities which are subordinated thereto;
- 13) discharge other functions provided for by laws of Ukraine.

Article 32

The President of Ukraine shall submit, not later than 1 September, draft State Budget of Ukraine to the Supreme Rada of Ukraine for consideration, accompanied by budgetary concept, indicators of credit emission of the National Bank of Ukraine, prospects for economic development of Ukraine for the next year, indicators of financial balance of Ukraine. Draft State Budget of Ukraine shall be drawn up with due account of the requirements contained in budgetary resolution adopted by the Supreme Rada of Ukraine.

Article 33

Whenever draft State Budget of Ukraine has not been submitted in good time, the Supreme Rada of Ukraine may take decision on the vote of non-confidence in all or particular members of the Cabinet of Ministers of Ukraine.

Article 34

In matters relating to the implementation of monetary credit policy, the Cabinet of Ministers of Ukraine shall coordinate its actions with the National Bank of Ukraine which is charged with defining and implementing such a policy.

Article 35

The Cabinet of Ministers of Ukraine, on the basis of the Constitution and laws of Ukraine, enactments of the Supreme Rada of Ukraine, decrees and orders of the President of Ukraine, shall enact, within its competence, ordinances and resolutions which are binding in the whole territory of Ukraine.

Ministers, heads of other central public executive authorities, heads of public executive authorities in the Autonomous Republic of the Crimea and regions, cities of Kyiv and Sebastopol shall provide administration in the spheres they are in charge of and be responsible to the President of Ukraine for the situation in such spheres. Regulatory and legal acts issued by central ministries and departments are subject to the registration in the Ministry of Justice of Ukraine.

SECTION V

COURTS OF UKRAINE

Article 36

Judicial power in Ukraine shall be exercised exclusively by the courts.

The Constitutional Court of Ukraine, general and arbitration courts form judicial system of Ukraine.

Judgements are rendered in the name of Ukraine.

Article 37

Courts shall protect rights and lawful interests of citizens, legal persons and the State through administering justice.

Courts are independent. All of governmental and other institutions and citizens are required to respect courts' independence.

Courts, in their activities, obey only the law.

Courts of Ukraine shall have separate budgetary financing.

Article 38

The Constitutional Court of Ukraine shall be an independent authority of the judicial power which ensures the conformity of the laws, other regulatory acts of the legislature and the executive to the Constitution of Ukraine, as well as ensures the protection of the constitutional human and civil rights and freedoms.

Article 39

Justice in Ukraine shall be administered in the form of legal proceedings in civil, economic, administrative and criminal cases as well as in the form of rendering judgements on the conformity of legal acts, issued by officials, local public executive authorities and local self-government authorities, to applicable legislation.

Any interference in administering justice shall be prohibited. Judgements may be reviewed only by the court and in accordance with the procedure established by the law. Setting up extraordinary and special courts in time of peace is not allowed. Establishment and operation of such courts in time of war are governed by the law.

Article 40

Judges shall be immune, independent and responsible only to the law. Status of judges and procedure for their appointment shall be specified by the Constitution of Ukraine and laws of Ukraine.

Article 41

Judicial supervision of the lawfulness of judgements pronounced by general and arbitration courts shall be exercised by the Supreme Court of Ukraine and the Highest Arbitration Court of Ukraine, respectively.

Article 42

Judges of all courts, except judges of the Supreme Court of Ukraine, the Highest Arbitration Court of Ukraine and the Constitutional Court of Ukraine, shall be appointed by the President of Ukraine upon submission of the Ministry of Justice of Ukraine as agreed with the Supreme Court of Ukraine and the Highest Arbitration Court of Ukraine, respectively.

SECTION VI
PROSECUTOR'S OFFICE

Article 43

Prosecutor's Office of Ukraine shall be the authority entrusted with holding formal charges, exercising general supervision and supervision of the enforcement of sentences in places of confinement.

The Prosecutor-General of Ukraine and prosecutors subordinated to him are charged with:

- 1) supervising the observation of the Constitution and laws of Ukraine by authorities and officials of the executive, representative bodies and local self-government authorities, enterprises, institutions and organizations of all forms of ownership as well as by nationals of Ukraine, stateless persons;
- 2) supervising the compliance with the legislation concerning rights and freedoms of citizens;
- 3) supervising whether agencies charged with search, inquiry and preliminary investigation do comply with the law;
- 4) investigating offenses which fall within the competence of the Prosecutor's Office;
- 5) holding formal charges in the court;
- 6) supervising the compliance with the law in places of enforcement of criminal penalties and the application of other enforcement measures;
- 7) protecting material and other interests of citizens, legal persons and the State.

Article 44

The Prosecutor-General of Ukraine shall be appointed to and dismissed from his office by the Supreme Rada of Ukraine upon submission of the President of Ukraine.

Article 45

In exercising their functions, prosecutors are independent and guided only by the Constitution and laws of Ukraine. Organization, functions and procedure for the operation of the Prosecutor's Office of Ukraine shall be prescribed by the Law of Ukraine "On the Prosecutor's Office."

SECTION VII

LOCAL PUBLIC EXECUTIVE AUTHORITIES AND LOCAL SELF-GOVERNMENT IN UKRAINE

Article 46

State administrations headed by chairmen thereof at the level of regions, cities of Kyiv and Sebastopol, districts, urban districts in Kyiv and Sebastopol shall be public executive authorities respectively in regions, cities of Kyiv and Sebastopol (as cities of national importance) and districts (except urban districts excluding urban districts in the cities of Kyiv and Sebastopol).

The President of Ukraine appoints individuals elected chairmen of regional, Kyiv and Sebastopol municipal and district Radas heads of regional, Kyiv and Sebastopol municipal, and district State administrations, respectively.

In exercising their functions, local public authorities are subordinated to public executive authorities of higher level.

Legal status and functions of regional, Kyiv and Sebastopol municipal and district State administrations are specified by the present Law and Regulations to be approved by the President of Ukraine. The President of Ukraine may delegate to a State administration functions with regard to the management of State property located within the territory of the respective administrative-territorial unit.

Organization and functioning of public executive authorities and local self-government authorities in the cities of Kyiv and Sebastopol are specified by specific laws.

Article 47

Local self-government in Ukraine shall mean the right, guaranteed by the State, of territorial communities of citizens and of local self-government authorities elected by them to decide, at their discretion, all local matters within the limits of the Constitution and laws of Ukraine.

Territorial framework of local self-government includes village (village's Rada), town, city. Urban districts are an integral part of local self-government in cities. Matters relating to the organization of administration in urban districts fall within the competence of municipal Radas.

Territorial communities of citizens residing in villages (villages' Radas), towns and cities are primary subjects of local self-government.

Territorial communities of citizens exercise their functions directly and through bodies they elect.

Financial and economic basis of local self-government includes communal property and financial resources of a village (villages' Rada), a town, a city, which are generated from revenue of local budgets and extrabudgetary inputs.

Article 48

Territorial communities of citizens shall directly exercise local self-government through such forms as referenda and other means of citizens' participation in discussing and deciding matters which fall, under the law, within the competence of local self-government.

Article 49

Local self-government authorities in villages (villages' Radas), towns, cities shall be village, town, city Radas, respectively, which are elected, in accordance with the legislation of Ukraine, by nationals of Ukraine residing within the territory of respective administrative-territorial unit.

The competence of local self-government authorities extends to:

- drafting, approving and executing budgets of respective administrative-territorial units in accordance with applicable legislation;
- establishing local taxes and charges prescribed by the law;
- managing communal property;
- organizing and holding local referenda;
- promoting the compliance with the Constitution and laws of Ukraine, decrees and orders of the President of Ukraine, ordinances and instructions of the Government of Ukraine;
- discharging other functions prescribed by the applicable legislation.

Local self-government authorities, based on local situation and particularities, may, upon mutual consent, redistribute between them some local self-governing functions on the basis of agreements.

Procedure for establishment and organization as well as scope of competence of local self-government authorities shall be specified by a specific law.

Article 50

Executive committees shall be executive bodies of village, town and city Radas. Personal membership of the executive committee of respective Rada is selected by Rada's chairman at his discretion.

Chairmen of village, town, city Radas are elected by nationals of Ukraine residing within the territory of the village (village's Rada), town, city. Chairman of the Rada is the head of the executive committee of respective village, town, city Rada ex officio.

Chairmen of village, town, city Radas shall provide overall guidance of the activities of respective Rada as a self-governing body and manage the activities of public and other services of respective executive bodies of local self-government.

Article 51

Chairmen of village, town and city Radas and executive committees headed by them, in addition to the Rada's competence, shall also discharge functions of the executive delegated to them, the scope of which is specified by the President of Ukraine.

Chairmen of Radas and executive committees headed by them, in matters relating to self-governing functions, are responsible and accountable to respective Radas.

Chairmen of Radas and executive committees headed by them, in matters relating to discharging functions of the executive delegated to them, are subordinated to the President of Ukraine, the Cabinet of Ministers of Ukraine and the heads of State administrations of higher level.

Article 52

Decisions taken by Radas, their chairmen and executive committees on matters relating to local self-government, whenever they are contrary to the Constitution and laws of Ukraine, pending judgements thereon rendered in accordance with applicable legislation of Ukraine, are suspended:

- at the level of a village, town, city (city of district importance) - by the head of respective district State administration;
- at the level of a city (city of regional importance) - by the head of regional State administration.

Article 53

Radas at the level of regions, cities of Kyiv and Sebastopol, districts, districts in the cities of Kyiv and Sebastopol shall be representative bodies in regions, cities of Kyiv and Sebastopol, districts (except urban districts excluding urban districts in the cities of Kyiv and Sebastopol). Those Radas, within their competence:

- approve the budget and control its execution;
- approve programs of social and economic development of respective administrative-territorial units;
- hear annual report of the head of local State administrations on the implementation of territorial social- and economic development programs and budget execution.

Other functions of Radas at the level of regions, cities of Kyiv and Sebastopol, districts, provided for by the applicable legislation, are conferred on regional, Kyiv, Sebastopol and district State administrations.

Setting up and functioning of regional and district Radas as well as the scope of their competence are specified by specific law.

Article 54

Decisions taken by Radas at the level of regions, cities of Kyiv and Sebastopol, districts on matters relating to their own functions, whenever they are contrary to the Constitution and laws of Ukraine, pending judgements thereon rendered in accordance with applicable legislation, are suspended:

- at the level of a district - but the head of respective regional, Kyiv and Sebastopol municipal State administration;
- at the level of regions, cities of Kyiv and Sebastopol - by the Cabinet of Ministers of Ukraine.

Article 55

Village, town, city, district and regional Radas shall consist of deputies whose total number, depending on the number of population residing within the territory of respective administrative-territorial unit, may not be less than 7 and more than 75.

Article 56

Decisions taken by chairmen of village, town, urban district (in places where they will be established), city Radas and by executive committees headed by them on matters relating

to discharging functions of the executive delegated to them, whenever they are contrary to the Constitution and laws of Ukraine, decrees and orders of the President of Ukraine, ordinances and instructions of the Government of Ukraine, may be repealed by heads of regional State administrations.

Article 57

Decisions taken by heads of district State administrations, whenever they are contrary to the Constitution and laws of Ukraine, decrees and orders of the President of Ukraine, ordinances and instructions of the Government of Ukraine, may be repealed by heads of regional, Kyiv and Sebastopol municipal State administrations.

Decisions taken by heads of regional, Kyiv and Sebastopol municipal State administrations, whenever they are contrary to the Constitution and laws of Ukraine, decrees and orders of the President of Ukraine, ordinances and instructions of the Government of Ukraine, may be repealed by the President of Ukraine.

Article 58

Whenever they break the Constitution and laws of Ukraine, decrees and orders of the President of Ukraine, ordinances and instructions of the Government of Ukraine, heads of regional, Kyiv and Sebastopol municipal, district State administrations may be dismissed early by the President of Ukraine.

Dismissal of heads of regional, Kyiv and Sebastopol municipal, district State administrations entails termination of their mandate of chairmen of regional, Kyiv and Sebastopol municipal and district Radas.

Mandate of chairmen of village, town, city Radas may be terminated early by virtue of a judicial decision by the President of Ukraine whenever they break the Constitution and laws of Ukraine, decrees and orders of the President of Ukraine, ordinances and instructions of the Government of Ukraine.

Article 59

The Autonomous Republic of the Crimea shall be an administrative-territorial autonomy of Ukraine.

The Autonomous Republic of the Crimea decides, at its discretion, matters falling within its competence under the Constitution of Ukraine and laws of Ukraine.

SECTION VIII
FINAL PROVISIONS

Article 60

The present Law shall enter into force on the day of its promulgation and shall be effective pending the adoption of the new Constitution of Ukraine.

Article 61

The legislation of Ukraine shall be effective in the part which is not contrary to the rules of this Law.

II

Pending the adoption of the new Constitution of Ukraine, the provisions of the applicable Constitution of Ukraine shall be effective only in the part which complies with the present Constitutional Agreement.

III

To recognize as necessary the creation of adequate conditions for acceleration and successful completion of the constitutional process in Ukraine in order to adopt the new Constitution of Ukraine not later than one year after the date of signature of this Constitutional Agreement.

IV

Pending the adoption of the new Constitution of Ukraine the Parties shall strictly observe the provisions of this Constitutional Agreement and shall act in full compliance with it.

Pending the adoption of the new Constitution the Parties shall not bring to the all-Ukrainian referendum, consultative referendum and public opinion poll questions other than the adoption of the new Constitution of Ukraine, the text of which will be agreed by the Parties.

* * *

The Parties realize that non-compliance with the provisions of this Constitutional Agreement will result in chaos in public life, collapse of the economy, threat of social conflict and will put in question the very existence of the sovereign democratic Ukraine.

This Constitutional Agreement shall enter into force upon its signature by the President of Ukraine and the Chairman of the Supreme Rada of Ukraine and shall be open for signature by the people's deputies of Ukraine.

Chairman of the
Supreme Rada of Ukraine

President of
Ukraine

Olexandr MOROZ

Leonid KUCHMA