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# **LOCAL SELF-GOVERNMENT IN BELARUS: HOW TO SHIFT MYTH TO REALITY**

Policy paper

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# 1. Short introduction to local self-government situation in Belarus

## 1.1. The system of local self-government in Belarus

From 1990 the situation in USSR and after its breakdown has been encouraging and inspired a feeling of inevitability of reforms. Local self-government was one of the spheres where this sense dominated, too. In 1991 a Law "On Basics of Local Self-Government and Local Economic Management in BSSR" was adopted. It gave power from party institutions to Councils at local level and created good preconditions for local self-government development.

However beginning from 2004 the process of establishment and development of local self-government in Belarus first stopped and then went back.

In 1995 the "vertical" of executive-administrative bodies ("Executive Committee") began to grow: the Councils "delegated" their mandates to executive bodies, so that they got more and more political, economic and personnel power and influence. Constitution and legislation were changed: since then the executive bodies have stopped being subordinated to the Councils and became subordinated to the government and President.

As a result in 1999 the state "vertical" of local government was established, and later it was only getting stronger.

So a system of local and regional administration was created in Belarus, which is based on principles of **state theory of local self-government** (created by Rudolf von Gneist and Lorenz von Stein in the middle of the XIX century). The main postulates of this theory can be presented in the following way:

- **Local self-government is a continuation of state, and its bodies are in fact local government agencies;**
- **Area of responsibility of local self-government is the implementation of state goals; so local self-government agencies cannot have other tasks rather than formulated by the state;**
- **Any public administration is a state affair, therefore the sense of existence of local self-government is not divided by the state, but obeying its interests and goals.**

## 1.2 Constitutional model of the power

The concept of Republic of Belarus Constitution regarding local democracy assumes existence of two kinds of local authorities: (Section 5, Articles 117-124). In the Constitution they are assigned in the following way:

- a) local government;
- b) local self-government.

Local government means activity of local executive-administrative authorities which are subordinated and reporting directly to the President of the Republic of Belarus (Article 119 of the Constitution of Belarus).

Local self-government means activity of local Councils of deputies, which are elected by citizens for 4 years (Article 118 of the Constitution of Belarus).

The Constitution directly establishes a vertical chain of the command of both the executive authorities and Councils by introducing the notions of "superior executive-administrative body" and "superior representative body" (Article 122 of the Constitution of Belarus). So the highest level for executive-administrative bodies is the President of the Republic of Belarus, and for representative bodies – the Parliament, National Assembly of the Republic of Belarus.

As we can see, in Belarus there is a constitutionally secured model of power, which consists of two hierarchic verticals: executive power and legislative power, as it is illustrated at Figure 1 (Annex 1). This model reminds the Soviet

model of organization of local power with one crucial exception. In accordance with USSR Constitution of 1977 (Article 149 of the USSR Constitution) local executive authorities have been formed by local Councils of popular deputies, reported to them and controlled by them. In the Constitution of Belarus it is stated that local executive bodies are formed by the President of the Republic of Belarus who appoints heads of these authorities or determines the order of that appointment. It sounds paradoxically but we have to resume that Soviet system of local public administration was to a greater extent, according to European Charter of Local Self Government than the existing one in Belarus today.

### 1.3 European Charter of Local Self-Government

The European Charter of Local Self-Government was adopted by the Congress of Local and Regional Authorities of Europe October 15, 1985. This document is signed and ratified by 44 out of 47 member states of the Council of Europe (as of May 4, 2010).

The European Charter of Local Self-Government is an international legal instrument, which is the result of a number of initiatives and long-term work within the Council of Europe. The Charter is a major source of municipal law for the European countries, following the way of development of local self-government in modern Europe.

It is noted in the scientific and practical commentary on the Constitution of the Republic of Belarus, edited by G. Vasilevich (Article 117), following the European Charter of Local Self-Government, which the most fully describes the concept and principles of local self-government, **is one of the conditions for entry into the Council of Europe.**<sup>1</sup>

Definitely, while preparing to the entry of Belarus into the Council of Europe, the issue of signing and ratification of the European Charter of Local Self-Government will be arisen. Every country that joined the European Charter of Local Self-Government in accordance with paragraph 1 of Article 12 of the Charter **agrees to be bound by the requirements of at least twenty of the thirty paragraphs** of Part I of the Charter, including at least ten from a nucleus of fourteen basic principles.

Analyzing the opinions and articles of a number of Belarusian and foreign experts in the field of local self-government, we could state that the Belarusian system of local self-government and the European Charter are based on two different grounds. As it was mentioned above, local self-government in Belarus is based on the state theory of local self-government. The principles and norms of the European Charter are formulated in the spirit of **theory of dualism** - a combination of state and public origins: within the framework of local issues local self-government is independent, but as soon as local self-government goes beyond, it becomes a part of the state machine.

Since the Republic of Belarus is officially a candidate country to enter the Council of Europe (the application of the March 12, 1993) it is the subject to the content of Part 3 of Article 2 of the Statutory Resolution CM / RES (2007) 6 "On the Congress of Local and Regional Authorities of Europe", adopted by the Committee of Ministers on May 2, 2007: "... Congress is preparing on a regular basis, for each country individually, reports on the local and regional democracy in all member states and **in states that have applied for membership in the Council of Europe**, and seeks to ensure, in particular, that the principles of the European Charter of Local Self-Government are applied in practice".

For this purpose the Institutional Committee of the Congress established a Commission of independent experts on the European Charter of Local Self-Government (document CG/INST (7) 33 rev.2), which deals with country monitoring of the implementation the European Charter provisions into national legislation of the Council of Europe member countries or candidate countries.

1. For entry into the Council of Europe in addition to joining the European Charter of Local Self-Government other demands are made for candidate countries. They include signing and ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms, abolition of the death penalty and other requirements that are not going to be considered in this policy paper.

## 1.4 The main conditions for reforms

In order to conduct an effective reform, four main factors must simultaneously be present:

- Political will of leaders, their strong desire to change the situation;
- Knowledge of experts in order to define goals and ways to reach them;
- Public support or at least consent to changes;
- People ready to implement reforms in practice.

Out of the listed factors only the second exists (however, when estimated with a certain degree of optimism). Formation of other factors is a certain process, the result of which is the uprising of conditions for implementation of the reform.

One may ask whether to start reforms now, or to wait until people and the society would be ready?

Yes, people and the society are not ready, but they cannot learn democracy from books. Society can learn only by taking part in the functioning of the new system. We believe that the postponement of reforms means a rejection of carrying them out at all. The key to success is not delaying the start of reform but the acceleration of the evolution of public awareness, providing support in the process of adjusting to the new system and in using the chances that it offers.

Programs aimed at civil society development play the key role in this process.

## 2. Presentation of the basic problems and setting goals to address them

As the reality shows, the implementation of the state theory of local self-government leads to establishment of administrative relations between state authorities and local self-government bodies, and in some extreme cases (e.g., in Belarus) it even leads to **the complete disappearance of local self-government and its replacement by local government**. The state model is definitely efficient in the way that it provides complete subordination of the ruled entity to its superior, and as a consequence - one hundred percent implementation of top decisions at the local level. However, this model is rarely effective in a broader sense: it does not become a well-functioning, it gets no civil support. Within this model citizens do not get the real capacity to manage local affairs. Civic officers (the local government officials) do not base their actions on the interests of the population, and are guided by instructions received from higher levels of the government. But the central government, due to some natural causes (distance, focusing on the problems of a different order, etc.), can hardly imagine local issues and problems, so its decisions are often far from optimal. They are executed, but often bring no benefit to the citizens. So the dissatisfaction of population with the local government grows, and in case of difficult economic situation in the country, it could lead to mass protests. Finally, this model cannot be recognized as matching democratic standards of management.

### 2.1. Presentation of the basic problems

Taking into consideration the specific situation in Belarus and above-mentioned state of affairs, we consider the following problems in the sphere of local self-government in Belarus to be fundamental:

- 2.1.1. absence of political will to start and carry out the reforms;
- 2.1.2. presence of centralized model of government at regional and local levels;
- 2.1.3. discrepancy between Belarusian legislation and the European Charter of Local Self-Government;
- 2.1.4. absence of official conceptual approaches to the development of local self-government in the Republic of Belarus;
- 2.1.5. discrepancy of the principles of organization and holding (здесь of не надо) the local elections to democratic standards;
- 2.1.6. low level of people's public administration education working in this sphere;
- 2.1.7. loss of traditions of the local community and civil society, excessive bureaucratization of direct democracy forms, lack of transparency of the local authorities' work.

### 2.2. Setting goals to address these problems

#### 2.2.1. Formation of political will

This task can be divided into two stages:

- **The first stage.** The main objective is to obtain consent to carry out reforms from the political leaders of the ruling group.

When realizing this stage the efforts should be directed to the formation of such views within the ruling group. On the one hand, some external factors can influence such a mind shift, e.g. development of the political, economic, social and other situations within Belarus and abroad. On the other hand, such influence and assistance may be provided by means of lobbying organizations and civil society, mass media, or it could happen due to the reevaluation of views within the ruling group (because of its personal renewal, or individual personal ambitions of status or material character, or increased level of perception and awareness of existing problems).

- **The second stage** begins when the ruling group is ready to make a decision on the initiation of reforms. On this stage it is necessary to obtain the consent of other political groups, and society.

On the second stage the effort should be directed to political parties outside the ruling group, the structures of civil society, and citizens directly. The ruling groups and state bodies and institutions should become initiators and executors of this work.

## 2.2.2. Decentralization of power. The principle of subsidiarity.

As history shows, centralized control system cannot cope with the main task of the government - to ensure its citizens a decent standard of living.

In any legal democratic state one of the initial conditions for the existence of local self-government institutions within the power system is exactly the decentralization of power. In the most general sense, decentralization is **the transfer of certain amount of power from government to local elected bodies (self-government bodies) and giving them the necessary rights, responsibilities and resources.**

The decentralization of state power is a key problem in implementing administrative reforms at the local level. The difficulty is to find an appropriate balance between decentralization of state power and autonomy of local self-government bodies that meets the actual conditions and the level of the society development.

Theory of modern constitutionalism claims that the state should be understood as a common property of all citizens, whose goal is to create optimal conditions for development and, first of all, the following conditions:

- ensuring welfare;
- law enforcement;
- ensuring conditions for the development of culture;
- internal and external security guarantee.

Thus, the function of the state is not the «management» itself, but the establishment of stable and secure environment for consumers, businesses and civic associations. The development of the state and society is not the result of the administration, it is a sum of the results of the actions of individuals and organizations of social and economic spheres. The state may facilitate or complicate this development. The state may be the reason why the results will be multiplied or squandered, but of course, it cannot replace the activity of independent subjects.

The modern state should deal only with what it must deal with. What goes beyond the frame of its primary functions must be transferred to other subjects which would do it much better, cheaper and more efficient. Thus, it is a completely different philosophy of the state, according to which it must fundamentally limit its responsibility area. This means not only the privatization in economy, but also far-reaching deregulation and limitation of state interference into various spheres of social life. Coverage of activities and responsibilities of the state has to be seriously narrowed.

The state is not only the government and its administration. Not all of the state functions should be executed by the central administration. The basis of such approach is **the principle of subsidiarity.** This principle is a cornerstone of the organization in a modern democratic state.

The principle of subsidiarity, which determines a person as the main subject of any activity, claims that other institutions should be established as a subsidiary to his or her actions. Therefore, the village council should deal with what the individual and his or her family cannot do. In these regards, the district authorities should function as auxiliary to village council, and the same regarding the regional ones in relation to the district authorities.

The same principle is also to be applied to the state and the government. The state must perform support functions in relation to all institutions and organizations serving the interests of citizens. Institutions are built where smaller organizations located closer to the citizen are not able to perform more complex tasks.

The principle of subsidiarity means a rejection of hierarchical dependence of subjects. You cannot claim to «lower» unit to subordinate to the «high» if the latter should be only auxiliary to an «inferior». This statement is fundamental to the organizational structure of a modern constitutional state.

Unfortunately, both the previous socialistic system and the existing Belarusian one have taught the society the opposite: for example, that the chairman of the district executive authority is the boss of the chairman of village executive authority, and the Minister is a chief of both of them. There is a belief that an official from the center has more power and value than the official of the regional or local level. In fact, the role of the district executive authority is complementary for the objectives of the local executive authority, and an official from the center is to help governments and self-governments, and deal only with those issues, which they themselves cannot solve.

The principle of subsidiarity defines the separation of powers. The adoption of the principle, which claims that the state is an auxiliary organization means the need for decentralization and delegation of power «down.» It is also necessary to separate the decentralization and deconcentration.

Decentralisation is the transfer of power and resources among autonomous units, whereas deconcentration is the delegation of authority down within the same management system. «Deconcentrated» authorities anytime can be returned back. Responsibility for their proper use is run by the same center, which gave specific tasks to lower unit in order to improve efficiency.

In the case of proper decentralization it happens differently. The transfer of authority and responsibility in this case is not just a result of a central decision, but it is the effect of changes in legislation or a bilateral agreement covering the transfer of authority and responsibility for certain tasks. The reverse transfer of authority requires further changes in legislation or another bilateral agreement.

Obviously, **in the case of administrative reforms we are talking about decentralization, not deconcentration. The first one changes the institutional structure of the state, while the second - only the way to perform tasks.** And this is the fundamental difference between the decentralization of deconcentration.

### **2.2.3. Bringing the Belarusian legislation in the sphere of local self-government in accordance with the principles and norms of the European Charter of Local Self-Government**

#### The correspondence between the Belarusian Constitution and Charter provisions

The legal framework established by the Constitution of the Republic of Belarus regarding local self-government is not founded on the principles outlined in the European Charter of Local Self-Government. The most fundamental differences relate to definition of the essence of local self-government and its responsibility to address local issues. Table 1 (see Annex 2) gives the comparison of the norms of the Charter and Constitution of the Republic of Belarus.

The presence of inconsistencies with the principles and norms of the European Charter of Local Self-Government in the Constitution of the Republic of Belarus prevents the movement of Belarus towards European integration. At the same time, Article 8 of the Constitution prohibits the conclusion of international treaties that contradict it. The European Charters in general and the European Charter of Local Self-Government in particular have the status of international conventions or treaties. Given the fact that a certain number of rules of the Charter are in conflict with the provisions of the Constitution, the ratification of the European Charter of Local Self-Government by the Republic of Belarus formally is not possible without changing the correspondent constitutional norms.

However, if the political will would appear, much of the controversy could be resolved by making changes and additions to the Constitution. In accordance with Article 140 of the Constitution of the Republic of Belarus, changes and amendments to Part V «The Local Government and Self-Government» do not require holding a referendum, they may be adopted by the Parliament (Article 139 of the Constitution of the Republic of Belarus).

It is also important to assess the Belarusian legislation in the sphere of local self-government is the example of the two laws: the Law of the Republic of Belarus «On Local Government and Self-Government in the Republic of Belarus» dated January 4, 2010 № 108-3 and the Budget Code of the Republic of Belarus of July 16, 2008 № 412-3, both in terms of their compliance with the European Charter of Local Self-Government and in terms of showing of political will aimed at integration into European space.



### ***Analysis of compliance of norms of the Law «On Local Government and Self-Government in the Republic of Belarus» with provisions of the European Charter of Local Self-Government.***

In accordance with the Law «On Local Government and Self-Government in the Republic of Belarus» of January 4, 2010 № 108-3, in Belarus there are three subordinated territorial levels of local power (see Figure 2, Annex 3). All territorial levels have identical organizational structure of local government and self-government (except the city of Minsk and the city divided into districts, where districts form district administrations, and councils of deputies are not elected).

The organizational structure of local power (except the cities divided into districts) is shown in Figure 3 (see Appendix 4).

In Figure 3 (see Annex 4) it is seen that the executive-administrative bodies operate on the principle of dual subordination. It implies that not only the executive bodies report vertically to each other (it is an administrative chain of command), but also their structural units report to the same structural units of the higher executive bodies (sectorial chain of command). Executive bodies are accountable to the executive bodies of the parent, but not to the public. They are accountable to the Councils of Deputies only regarding the issues within the competence of the Councils of Deputies.

The sectorial subordination means that almost all of the executive authorities should have the same set of structural units. In other words, the Law, not installing directly, but in fact enters the same structure of the executive bodies of all three levels.

This approach has been widely used in the Soviet period, when the activities of local authorities did not need anything other than the execution of directives from the top level. Subordinate executive bodies were in fact just territorial agents of higher executive bodies at that time. They had a limited level of freedom and a strong administrative influence on the representative bodies - the Councils of People's Deputies. Such a scheme is extremely ineffective and unable to meet new challenges in the market economy. The need for clear division of responsibilities between different levels of the government, the emerged understanding the meaning of the government as a service provider through the taxes paid by the citizens have led to the situation that many former Soviet countries had been forced to abandon the use of the above-described scheme in favor of democratic standards.

Regarding the article-by-article analysis of the text of the Law, it is necessary to explain the method used in the research. The text of the current Law, designed as a Table 2 (see Appendix 5) was taken as the reference. Comparison with the European Charter of Local Self-Government was done by the letter of the Charter (the analysis of comparable content of articles) and by its spirit (analysis of the implications arising from the application of provisions of the Law and comparing them with the provisions of the Charter). The result of the comparison the Law rules and the Charter provisions is shown in the column «Comments.»

Only those articles of the Law were analyzed to define the economic, institutional and political foundations of the local authorities in the Republic of Belarus. Auxiliary of the Law or rules derived from its main provisions have not been the subject of this analysis. In any case, the column «Comments» provides the indication of the reason of ignoring the investigation of the certain norms.

### ***Analysis of compliance of the Budget Code of the Republic of Belarus with the European Charter of Local Self-Government***

The article by article analysis of the Budget Code (see Table 3, Appendix 6) is completed on the basis of the same research method that was applied in analyzing the provisions of the Law «On Local Government and Local Self-Government in the Republic of Belarus.» The small number of the studied articles in the total amount of articles of the Code is explained by the fact that the main bulk of the Code provisions concerns the state budget and public finances and does not address issues of local government and self-government. Such a little attention paid to the regional and local level of government in the Budget Code indicates at least two things.

The first is that the concept of subordination of all levels of the government, used in the Republic of Belarus includes local authorities in the system of central government. In this regard, all the rules that determine the order of the central government in the financial and fiscal areas apply to local self-governments, and this eliminates the need for special regulation of these entities under the Budget Code.

Secondly, on the basis of the Budget Code norms, one can make a conclusion on underestimation of the role of

local self-government: whatever budget decisions are made by local self-government, no matter what action is taken by it, the result would be approximately the same. All additional funds received in excess of the income amount determined in accordance with the state standards, will be forfeited in favor of the central government, and the central government would also pay compensation in case of missing funds.

In fact, the logic of the Budget Code is that **the financial resources of local authorities, called in the Code the local budgets, are in practice are cost estimates** approved by the central government through the strict regulation of utility costs.

#### **2.2.4. 2.2.4. Preparation of conceptual provisions and approaches to the development of local self-government in the Republic of Belarus.**

In order to improve the institutional mechanisms of governance, it is necessary to develop a unified approach to the evolutionary development of local self-government.

The absence of such an approach has a negative impact on the development of appropriate legislation, on the development and practical implementation of some both national and regional programs, on the administrative and territorial structure improvement, etc.

Thus, the implementation of the «State Program of Development and Regeneration of Village,» about a third of agro-towns are located in settlements that are not administrative centers of village councils. In some areas, optimization of the administrative-territorial structure is fulfilled, for example, in Vitebsk, and is planned to be accomplished in Mogilev, but there is no unified approach to solve this problem. Method of combining urban and rural Councils reduced the number of administrative and territorial units. This sometimes led to a situation when the representative bodies (the Councils) were abolished, but the executive-administrative bodies continued to work (e.g., in cities of Borisov and Zaslavl).

The process of merging (предлог не нужен) rural councils goes fast. **As a result, for the period from 18.05.2006 till 25.04.2010 the number of rural councils has decreased by 97 units!** How does this process go, what criteria are taken into account, are there any organizational or economic research studies, whether this process is unified across the state, are there any guidelines or regulations prepared and adopted by the relevant authorities? These and many other questions remain open.

At the same time, back in 29.09.2000 (!) the Congress of Councils of Deputies of the Republic of Belarus has adopted the Resolution, Section 3 of which says: «It is necessary to ensure the development of the Concept of reforming the local government and self-government in the Republic of Belarus on the basis of scientific researches of local self-government issues...»

This Concept should be based on a model system of local self-government, built on the principles and norms of the European Charter. To implement the Concept it is necessary to develop and approve a list of actions (including the development of an appropriate legal framework and creating an economic basis for local self-government), as well as a timetable for their implementation and to identify responsible persons.

#### **2.2.5. Discrepancy of the principles of organization and holding of the local elections and democratic standards**

As it had been noted before, one of the basic and fundamental differences between the local self-government and state administration is a method of forming the structure of public authorities: local self-governments are elected by citizens, and state administration bodies are formed by being appointed by the parent bodies of the state administration.

In addition, local elections are a form of manifestation of democracy in general, and a form of direct civic participation in local self-government in particular.

Beginning from the fall of 1996 all of the results of all the elections have not been recognized free, transparent and democratic by international organizations because of numerous violations of the existing democratic standards.

The most problematic aspects of organizing and holding the elections in Belarus are:

- interference of both state and local level state government bodies in the electoral process;
- undemocratic character of the formation of election commissions;
- too bureaucratic nature of the process of nomination of candidates;

- opacity of registration of candidates;
- unequal conditions for candidates to campaign;
- the presence of non-transparent procedures for early voting;
- lack of transparency of vote counting;
- lack of access to information on the voting results at polling stations;
- obstructing public observers at polling stations to monitor voting and counting;
- inefficient procedure of appealing against election results and actions of election commission.

To correct the situation the following immediate steps should be taken:

- improvement of electoral legislation in regarding procedures to ensure transparency and democratic character of electoral processes;
- avoiding interference and administrative pressure on election commissions from national and local executive bodies;
- changing the principle election commissions formation; inclusion of representatives of oppositional political parties to commissions;
- reducing bureaucratic procedures for the nomination of candidates;
- ensuring transparency while the registration of candidates;
- impossibility to use the administrative resources by the candidates related state administration;
- exclusion of early voting procedure;
- using modern polling equipment (transparent plastic boxes, electronic voting systems);
- ensuring public observers with a real ability to track the voting and vote counting;
- transparent counting of ballots;
- mandatory issuance of the copy of the final protocol of the results of voting to each registered observer;
- improvement of the procedure of appealing against election results and actions of election commission.

In particular, the improvement of electoral legislation should be aimed at securing specific rights of civil society organizations to participate in the election procedures, as well as in the strict regulation of all actions of election commissions and government agencies within electoral process.

Only securing voters' confidence in fair and democratic character of all phases and procedures of election campaigns would bring legitimacy and authority to local self-governments.

#### **2.2.6. Training and development of personnel in the sphere of local self-government.**

Training and development of personnel in the sphere of local self-government is one more top problem for the Republic of Belarus.

For many reasons, the Belarusian specialists do not have enough analytical information about the content, nature, principles and norms of the European Charter and other international acts in the field of local self-government, as well as the information about relevant legislation of foreign countries.

Educational courses for training of local self-government staff, as well as other educational activities that are conducted from time to time both in Minsk and in regions, are almost always intended to clarify or discuss the current legislation or the new legal acts issued by the President. Sometimes the draft laws or regulations in the sphere of local self-government are discussed, but as a rule – the everyday problems of local importance.

One way or another, but almost all training events are aimed at studying the current national law. As a result, experts at the local level (with rare exceptions) have a one-sided knowledge limited by the national legislation.

As a result, **the experts do not have a system of concepts and terms unified with European science, there is no systematic and up-to-date information on the reforms that have finished or still ongoing in the countries of Central and Eastern Europe (including CIS countries), on the results of these reforms, their successes and failures.** There are too few scientific publications of Belarusian researches on issues of local self-government.

The methodological basis of Belarusian universities is too poor, as well as and the level of preparation at the faculty with the specialization «State Administration». The subject «Municipal Law» was generally excluded from the curricula of universities.

The specialization «State Administration» is not prestigious because young specialists after graduation have problems with employment in this field. Just very few graduate students prepare dissertation research on issues of local

self-government, as in Belarus the topic is seen as unpromising.

This situation can create serious problems in the nearest future. Especially this would be felt during the reform of the existing system of local self-government and bringing it inline with the main (basic) requirements of the European Charter of Local Self-Government. Therefore, the relevance of training and skills development in the area of local self-government on the basis of modern knowledge is very high and requires special attention.

### **2.2.7. The revival of the traditions in the local community and civil society, de-bureaucratization of direct democracy, transparency and openness in local government.**

- **The revival of the traditions of the local community and civil society.**

The essence of self-government system is based on the principle that people living in a certain area, form a community that is able to identify their needs and find ways to meet them. Local self-government can only be effective if there is such a community, a model of public administration should reflect the state of development of civil society. Despite the fact that in countries such as Poland, Lithuania, Latvia, self-government has already been existing for twenty years, the essence of the reform of local government is not everywhere yet understood by citizens. The consequences of forgetting the traditions of the local community and civil society are still dramatically felt. Nevertheless, it is active participation of citizens in local self-government that helps to revive the forgotten traditions in these countries.

#### **Territorial community of citizens (hramada)**

The primary subject of local self-government is the territorial community of citizens exercising their rights, either directly or via various institutions formed within it.

In most European countries (Lithuania, Germany, Sweden, Ukraine, France, Switzerland, etc.) the concept of «territorial community of citizens» (community, the commune, canton, in Belarusian - hramada) has a legislative basis. Belarusian legislation does not contain any notion of such a kind.

As a result, it is impossible to determine what is the subject of local self-government - the territorial community of citizens (hramada) or impersonal administrative-territorial unit, whose interests are represented, for example, by the Minsk District Council of Deputies – the interests of the administrative-territorial unit or territorial community of citizens living in the area of the Minsk district. This reinforces the impression that there is no relationship between citizens and the Council, which is elected by them.

Citizens do not have possibility to organize their territorial community, as this concept does not exist in law, also they do not have an opportunity to reflect features, specifics and traditions of local self-government in the Charter of the territorial community of citizens (hramada), because such a Charter does not exist anywhere, except the city of Minsk.

Declaration on Principles of Local Self-Government in the CIS Member States, adopted October 29, 1994 by the Interparliamentary Assembly of CIS Member States, defines local self-government as a system of organization of the population (territorial communities of citizens) for independent and responsible solving problems of local importance in accordance with the laws of correspondent state (Article 1 of this Declaration). Furthermore, the Declaration stresses that **territorial communities of citizens have the right to decide local issues** both through elected local self-governments, and directly, and this right is guaranteed by the Constitution and current legislation.

- **De-bureaucratization of direct democracy.**

The Article 117 of the Constitution of the Republic of Belarus lists such forms of direct implementation of local self-government by the citizens as local referendums and meetings, also it mentions other forms of direct participation of citizens in decision-making regarding issues of local importance. There are more than 10 forms of direct local democracy mentioned in the Belarusian legislation.

It is well known that in Belarus **there is no precedent of holding a local referendum**. With regard to other forms of direct democracy, the examples of them are very rare.

The passivity of citizens in the implementation of direct forms of participation in local self-government can partly be explained by the imperfection of instruments of direct democracy, the lack of conditions necessary for their use, excessive complexity of the proposed legal framework, etc.

The quality of legislation regulating the forms of direct democracy plays an important role in ensuring the involvement of citizens in the process of public administration. The law can overcomplicate the democratic process, imply substantial financial costs, and miss adequate guarantees for citizens in its implementation.

As an illustration, let's consider the order of organization and implementation of such forms of direct democracy as the local referendum and the local assembly.

### **Local referendum.**

The referendum is an opportunity for citizens to make the Council of Deputies or Executive Committee to take their will into account. But **the law gives the right to initiate and hold the referendum to the Councils, but not to the citizens** when they want to decide some local issue.

The value of the institution of a local referendum is the possibility of its use by citizens on their own initiative, that is, without the approval of the Council. Such a possibility, and not the indirect one through the Council, can be considered a form of direct democracy. The mechanism of decision-making by referendum may be required namely as an alternative to representative democracy, for example, in cases where the Council of Deputies or the Executive Committee does not take the necessary decision or when their decision does not conform to the majority of citizens.

And when the direct opportunity to initiate the referendum by the citizens is taken away from them, there could be no speeches about direct self-government by the people!

The issue of the importance of referendum question is very subjective. Paragraph 1 of Article 34 of the draft law says that if citizens have collected the required number of signatures under a certain procedure, it means that the issue should be considered as important, and a referendum to be held. It is citizens, not the Ministry of Justice, as required by Paragraph 3 of Article 126 of the Electoral Code, to have the right themselves to determine whether the issue for them is «essential» or not.

In addition, in case of initiating a referendum by citizens, all costs associated with the implementation of established procedures necessary to initiate a referendum shall be covered by the initiators (meaning by the citizens).

It is quite clear why local referendum as a form of direct democracy is not attractive for the citizens. And as a result, we have no precedent of holding a local referendum.

### **Local assembly**

Here again there are rules established by law and procedures, which create serious obstacles to citizens' initiatives for holding the local assembly. First of all, there is a very high requirement on the number of collected signatures (at least 10% of the number of citizens living in the territory), and the obligation of the initiators themselves to finance all the costs of the local assembly. Also, the initiators would need to solve some organizational issues, such as providing facilities for the local congregation, which is impossible in case of Belarus without the help of the Executive Committee (local government).

So it turns out that **in reality all the citizens' initiative are tightly controlled and regulated by the local (and other) authorities to the last detail, and the citizens without their consent cannot do anything.** As long as this situation persists, neither any local referendum, nor local assembly, or other forms of direct democracy would only be called in such a way.

In addition, there are too many laws regulating the forms of direct democracy, and they often regulate the same issues. However, many legal gaps remain. Many of the notions used are not clear, their normative content is unclear, too. Development of social activity and independence of citizens on the grassroots level is often prevented by the local officials who consider the activities of the local community as an encroachment to his or her authority.

All these factors affect the implementation of laws, regarding both representative and direct democracy.

Local self-government as an integral part of democracy requires a mandatory set of political institutions, including elected officials, guarantees of freedom and fairness of election procedures, freedom of expression, alternative information sources, the autonomy of association, respect to universal civil rights.

- **Transparency and openness in local government**

In Article 3 of the Law «On Local Government and Self-Government in the Republic of Belarus» dated 04.01.2010, the principle of transparency and consideration of public opinion is established, as well as the principle of permanent informing the citizens regarding the decisions on key issues of local importance.

The same law in the previous edition gave to every citizen an access to documents and materials directly affecting his or her rights and interests, in the line with Article 34 of the Constitution of the Republic of Belarus:

Citizens of the Republic of Belarus shall be guaranteed the right to receive, store and disseminate complete, reliable and timely information of the activities of state bodies and public associations, on political, economic, cultural and international life, and on the state of the environment.

State bodies, public associations and officials shall afford citizens of the Republic of Belarus an opportunity to familiarize themselves with material that affects their rights and legitimate interests.

The use of information may be restricted by legislation with the purpose to safeguard the honour, dignity, personal and family life of the citizens and the full implementation of their rights.

The current law has taken that opportunity away from citizens, which severely restricted their rights set in Article 34 of the Constitution of the Republic of Belarus.

The attitude of local authorities to public opinion when taking decisions on local issues can be illustrated with an example of demolition of kiosks and other outlets from the streets of Minsk in 2008. Despite the negative reaction to this decision expressed not only by entrepreneurs, but the vast majority of citizens (e.g., online surveys have shown that 97% of respondents objected to the decision). Minsk City Executive Committee took this decision, and the Minsk City Council of Deputies members withdrew from the solution of this problem. But this solution gave (and continues to deliver) a lot of inconvenience to citizens and created losses of time to purchase everyday consumer goods.

Continuing the topic of transparency, we should mention an overbureaucratized procedure for obtaining permits for the citizens to attend the sessions of the local Councils of deputies, fixed in Council regulations. Informing citizens about the activities of local Councils is very poor, too. First, the Councils do not have their own websites, information about their activities is available on the websites of Executive Committees, and secondly, the websites (with a few exceptions) are present only for the Executive Committees of the regional and the basic level, and, thirdly, the information about the local Council and its activity in most cases means just stating the address, phone number (sometimes e-mail is specified), list of deputies and the surname of the chairman of the Council. Information about the Council's activities is a big rarity.

Only in the «The Star» (“Zvezda”) newspaper there is a weekly supplement called «Local self-government», which in 2008-2009 was published every week, and then this frequency disappeared, and the application began to appear less frequently. In other newspapers information on the activities of local Councils appears episodically.

The citizens also face difficulties with obtaining information on the decisions of the Council and the Executive Committee. The implementation of the principle of transparency is a problem for current local government.

# 3. The main variants of development of the situation in the sphere of local self-government in Belarus

Despite the existence of serious problems in the sphere of local self-government in Belarus (if we evaluate the situation on the ground of principles and norms of the European Charter), the government believes that in this sphere there are no significant problems. So, naturally, the proposed options from the point of view of the probability of their implementation are limited.

Nevertheless, let us consider some of them:

Option 1: maintaining the «status quo» - no changes, except for “cosmetic” solutions or solutions to tighten the existing system.

Option 2: imitation of reforms - a set of decisions and actions that create a sense of movement towards the establishment and development of real local self-government, but in fact, the system remains unchanged.

Option 3: «the creation of a fundament» and «from myth to reality» - preparation for the reforms and their implementation.

## 3.1. Option 1. Maintaining the status quo.

This option is to preserve the existing system of governance at the local level, the essence of which is as follows:

- Local self-government is a continuation of the state, and its bodies are in fact local government agencies;
- Area of responsibility of local self-government is an implementation of state goals; so local self-government agencies cannot have other tasks rather than formulated by the state;
- Any public administration is a state affair, therefore the sense of existence of local self-government is not divided by the state, but obeying its interests and goals.

This is the vision of the local self-government in Belarus from the government’s point of view, and it has been repeatedly supported with the statements of many senior executives including the President:

«Central to this discussion must be the integrity of the vertical power from top to bottom, and no playing «democracy.» If we destroy this foundation, and the basic level is the foundation of the power vertical, we can start playing democracy, self-governance and so on»<sup>2</sup>.

«...The Councils are just the representative branches of the power. They do not even form executive committees, do not appoint the heads of local executive bodies, they are just approved by them».

«Under our laws the Councils are unlikely to be the landlords in their areas. They have different function. But together with the executive branch they carry this burden, this responsibility, and together they should become masters of a certain area. So I would really ask not to demand from the local Councils of deputies to solve the issues, which they are not responsible for and which they do not even have authority to solve etc.»<sup>3</sup>

Even if we agree with the opinion of some political analysts that in the middle of the 90s creating a rigid centralized system justified itself to some extent, the period of its validity is clearly delayed. Moreover, as shown by the above quotes, no changes are to be expected.

Manifested disregard for the local Councils as the representatives of citizens’ interests shows the attitude of the government to citizens and democracy, and the decorative nature of the Councils which are officially to ensure

2. Meeting “On strengthening the role of primary level of local government in addressing the needs of the population », 18.05.2006.

3. From the interview of Alexander Lukashenko at a polling station on the day of local elections. The 25th of April 2010.

democratic entourage of the local self-government.

With Option 1, decisions and actions of government are aimed at strengthening and improving the existing system, but not at its fundamental change.

## 3.2. Option 2. Imitation of reforms.

This option involves a set of specific solutions and (or) actions aimed at creating visibility of preparation and implementation reforms in the sphere of local self-government.

Such decisions and (or) actions may be:

- **Some development of different forms of participation of citizens in solving the problems of local importance** – the preparation of new laws about public hearings, surveys of public opinion. But, in the definitions of these norms the phrase «on critical issues,» or «on public decisions,» etc. would be mentioned. That means that there would be someone who has the right to determine what problem (or solution) to consider as «essential» or «of public interest» for citizens, to decide whether the problem needs discussion with the citizens or not, and what should be kept from the citizens as the «top secret».

- **Direct election of the chairmen of the Councils of Deputies by the citizens.**

Having the existing electoral system and the practice of usage of the so-called administrative resources, the central government can be confident that only a politically loyal the candidate would be elected. In addition, the chairmen of the Councils do not have any serious and real levers of influence on decision-making at the local level. Even if some chairman tried to conduct any independent decisions, they (if necessary) would be easily blocked by the Executive Committee (in particular, with the help of fully dependent and controlled deputies of the Council).

But the direct elections of chairmen of local Councils will be presented to the society and international structures as a big step towards democracy.

- **Changes to the regulations of the Councils in terms of easier access of citizens to sessions of the local Councils, the introduction of declarative principle is even possible.**

In this case, there is no much risk, too, because if needed you can always vote for the conduction of a closed discussion of an issue.

Other changes can be introduced that look attractive and would have a democratic form, but do not change the situation essentially.

- **Establishment of the Associations of Local Councils and the National Association of Local Councils.**

Currently there is no association of local councils in Belarus. If earlier it was due to the absence of proper legal framework, later the adoption of the new edition of the Law «On Local Government and Self-Government», the Article 7 of this Act enshrined the right of local Councils to unite. However, after the Act came into force (July 15, 2010) the central government instead of assisting and supporting the implementation of this law, performed some actions aimed at counteracting such initiatives, in particular, made sure the international conference on the subject failed.

In case of realization of Option 2 some actions to create associations of local Councils may be done, and the associations would be created.

However, in a centralized system, firstly, the entire process, beginning from the initiative to create them and ending with their activities, would be «coordinated» (read: administratively controlled) by the Council of the Republic, and, secondly, the associations are destined to be a democratic entourage.

But the creation of associations of local Councils de jure will enable the government to declare the movement towards the implementation of the principles and norms of the European Charter.

- **Analysis of the Belarusian law on local self-government for compliance with the principles and norms of the European Charter of Local Self-Government.**

The system of local self-government should be based on internationally recognized principles and norms set forth in the European Charter of Local Self-Government.



The analysis of the Belarusian law on local self-government for compliance with the principles and norms of the European Charter of Local Self-Government would identify gaps and inconsistencies that are present (in terms of the Charter) in the Belarusian legislation. This, in turn, would provide an opportunity to consider the identified problem areas in the process of improving the legislation and the preparation of the Concept.

At first glance, it seems logical to create an expert group of Belarusian specialists to prepare such an analysis. But, first, carrying out this work by Belarusian experts would not solve the problem, since being the opinion of only one party in this case - the Republic of Belarus. Secondly, this path can lead to tensions. These concerns are caused by periodically appearing claims that the Belarusian law on local self-government is already based on the principles of the European Charter (see page 7 of the Concept of draft Code of Republic of Belarus «On Public Administration and Local Self-Government», the Ministry of Justice, 2008).

However, analyzing the opinions and articles of Belarusian and foreign experts, it can be concluded that this statement is not quite true, as the system of local self-government in the Republic of Belarus and the European Charter are based on different theoretical models and, naturally, contradictions and discrepancies are inevitable.

The problem of the existence of sometimes diametrically opposite assessments of the legislation on local self-government is based on different and subjective understanding of the nature of local self-government, its nature, relationships between a person and the state, between local and central government.

But, as it comes to assessing the Belarusian legislation for compliance with the European Charter of Local Self-Government, not vice versa, then the execution of such an analysis by experts of the Institutional Committee of the Congress of Local and Regional Authorities of Europe seems to be more reasonable and logical.

As this is the case with the preparation of the Concept, the analysis of the Belarusian legislation in the sphere of local self-government is necessary, but to evaluate it from the point of view of the true intentions (an imitation of reforms or preparing for real reform) will be possible only after a certain time after its completion (nothing would happen or there would be actions based on analysis of the Charter and aimed at changing the Belarusian legislation according with the norms and principles of the Charter).

- **Creation of an expert group to prepare a Concept of local self-government in the Republic of Belarus**

Such groups have been created earlier. The most «fresh» example is of 2002-2003, when an expert group consisting from 25 members at the Institute of Economics of the National Academy of Sciences was created. The result of its work was a project of the «Concept of Reform of Local Government and Self-Government in the Republic of Belarus.» It was discussed at one meeting of the Presidential Administration, and then was put «under the carpet.»

In total, there was over a dozen of draft «Concepts of Reforming the Local Government and Self-Government of the Republic of Belarus» developed by both formal and informal groups, but none of these proposals has had any further development.

On the one hand, it is necessary to create such a group before the reform, because one cannot start the reform without clearly defined goals and objectives, methods and ways of reforming, action plan of reform and state institutions responsible for its implementation. On the other hand, it is difficult to assess the establishment of the expert group as a step to simulate a real reform, or as a step to prepare its implementation. The answer to this question can only be given by the action (or inaction) of government after finalization of the Concept.

In Option 2 the preparation of the Concept is regarded as imitation of reforms. That is, after the development and consideration the Concept will be put «under the carpet» once again.

But in some period of time (a year or two) the preparation of the Concept is able to create the impression of movement towards the development of local self-government.

As a result, the implementation of Option 2 is able for a small period of time to create an illusion of reforms of local self-government and to bring certain political and economic benefits to the government.

### 3.3. Option 3. The reform.

This option includes two stages and provides a number of actions to prepare for the real reforms, namely:

#### 3.3.1. Stage 1. "The creation of a fundament".

3.3.1.1. Official letter from the Council of Ministers of the Republic of Belarus to the Council of Europe, inviting experts of the Congress of Local and Regional Authorities to analyze the Belarusian law on local government and self-government for compliance with the principles and norms of the European Charter of Local Self-Government.

3.3.1.2. Establishment of an expert group to prepare a "Concept of reforming local self-government in the Republic of Belarus", with subsequent approval by the Council of Ministers of the Republic of Belarus.

The actions proposed in paragraph 3.3.1.1 and paragraph 3.3.1.2 are already described and argued in Option 2 (paragraph 3.2). The difference is in the fact that in Option 2 these actions are imitation, and their results do not have any continuation. Within the Option 3 paragraphs 3.3.1.1 and 3.3.1.2 act as a starter and have their continuation in the actions 3.3.1.5 - 3.3.1.10 of the Option 3.

3.3.1.3. Preparation of cooperation projects with the EU in the field of local self-government in the framework of European Neighborhood and Partnership Eastern Partnership programmes, the UN Development Programme, etc.

3.3.1.4. Holding the series of international conferences, workshops, expert visits on topical issues of local self-government reform in the Republic of Belarus with the participation of the representatives of the Congress of Local and Regional Authorities of Europe, the EU Committee of Regions, international foundations and organizations working in this field, the organization of study tours and visits for managers and lawyers.

It is assumed that within the activities specified in paragraphs 3.3.1.3 and 3.3.1.4 the basic problem of 2.1.2, 2.1.3, 2.1.5, 2.1.6 and 2.1.7 would be solved (partially or completely). Through the EU programmes, through conferences, seminars, internships we expect that the professional development of specialists would be stimulated, as well as the study of foreign experience of reforms in local self-government, obtaining expert advice, work on aligning of the Belarusian legislation with the principles and norms of the European Charter.

3.3.1.5. Preparation for signing the European Charter of Local Self-Government

Signing the European Charter should be preceded by some preparatory work, namely:

- start of negotiations between the Republic of Belarus and the Council of Europe;
- identification by the Republic of Belarus the list of paragraphs of the European Charter which the country undertakes to perform (taking into account the results of activities described in 3.3.1.1);
- translation of the text of the European Charter into the national languages (Belarusian and Russian).

3.3.1.6. Preparation and submission by the President the draft law "On Amendments and Additions to Section V of the Constitution of the Republic of Belarus" to the Parliament – the Chamber of Representatives.

The Section V of the Constitution of the Republic of Belarus must conform to the principles and norms of the European Charter of Local Self-Government.

3.3.1.7. Preparation of the draft law «On Reform of the Local Self-Government in the Republic of Belarus» on the basis of the «Concept of Reforming Local Self-Government in the Republic of Belarus» approved by the Council of Ministers and further submission of this draft law to the Parliament.

3.3.1.8. Preparation and adoption of the resolution "On personnel training for local self-government institutions" by the Council of Ministers.

In particular it is necessary to open the «Public administration» programme in the universities as well as to improve the training and professional development of personnel using modern knowledge.

3.3.1.9. Preparation and submission by the Council of Ministers to the President proposals on optimization of the administrative-territorial structure and the administrative-territorial division. Signing the presidential decree «On Optimization of the Administrative-Territorial structure and division in the Republic of Belarus».

As noted above (see paragraph 2.2.4) optimization of administrative-territorial structure and division is one of the most difficult tasks because of its development and implementation require serious research and significant financial and time costs.

3.3.1.10. The media coverage of the preparation of the reform of the local self-government reform, the initiation of public discussion of this reform by citizens, deputies, experts and scholars.

Public character of the preparation and implementation of the local self-government reform is an important part of the reform itself it is aimed at both its explanation, and to searching for optimal solutions to certain problems, as well as obtaining public support for reform.

#### 3.3.2 Stage 2. "From myth to reality".

This step includes additional steps to continue the reform of local self-government, strengthening its administrative

and legal support.

#### 3.3.2.1. Adoption by the Parliament of the Republic of Belarus:

- amendments to Section V of the Constitution of the Republic of Belarus, which secures the following basic principles:

- the right of citizens to local self-government is consolidated;

- local self-government is a form of public authority, which is not a part of the government;

- local Councils in their work proceed primarily from the interests of citizens, taking into account the public interests;

- the right of local Councils independently approve the structure and staffing both of its own board and its executive bodies, to appoint and dismiss heads of institutions established by them (with the exception of elected officials);

- decisions of the Councils can be canceled by the courts.

- law «On Reform of Local Self-Government in the Republic of Belarus.»

The provisions of the law will show the direction, stages, the timing of reform, sources of funding, the list of government bodies responsible for implementing the reform, the establishment of the Ministry for Regional Policy and Local Self-Government;

- law «On Local Self-Government in the Republic of Belarus.»

Norms of the law would be brought in line with the revised Section V of the Constitution of the Republic of Belarus and the «Concept of Reforming the Local Self-Government in the Republic of Belarus»;

- law «On Administrative-Territorial Structure and Division in the Republic of Belarus».

A two-level system of local self-government is to be established dividing country to the regions (“oblast”) and county (“povet”). Estimated number of administrative-territorial units is: 7 regions (including the city of Minsk) and 300-350 counties. In order to bring services to the citizens in the counties other offices can be created as structural units of County Council.

The counties are to be formed by the merger of disaggregated districts (“rayon”) and aggregated areas of rural Councils. County Council makes decisions to establish offices, determines their jurisdiction, funding, staffing, etc.

- law «On Amendments and Additions to the Budget and Tax Codes of the Republic of Belarus.»

The law will consolidate the order of formation of local budgets “bottom-up” and a system of financial leveling will set the revenues and expenditures of local budgets, tax payments to local budgets, etc.

- amendments and changes to Section V of the Electoral Code regarding elections of deputies of the local Councils of deputies.

The Act will bring changes and additions to legislation aimed at strengthening of generally accepted democratic standards and principles of holding the local elections.

It is assumed that the above mentioned laws will meet at least the minimum requirements allowing the country to join the European Charter of Local Self-Government.

#### 3.3.2.2. Establishment of associations of local Councils and the National Association of Local Councils in the Republic of Belarus.

In contrast to a similar action described in Option 2, it is assumed that the process of creating associations of local Councils and the National Association of Local Councils in case of Option 3 would be democratic, voluntary, and without administrative interference of the central government.

Association of local Councils, the National Association would become partners of the central government in implementation the reform and in addressing different issues of the local level.

#### 3.3.2.3. Establishment of the Ministry of Regional Development and Local Self-Government with the relevant objectives, authority and responsibility in order to prepare and implement local self-government reform.

The Ministry would prepare proposals to the President and the Government to implement reform, would create the necessary working groups to prepare the Concept, the draft laws, new administrative-territorial division, changes and amendments to the financial-budgetary issues, and other documents, would coordinate the work of different group would monitor the process of implementation of the reform.

#### 3.3.2.4. The signing and ratification of the European Charter of Local Self-Government by the Republic of Belarus.

The Option 3 shows the main (basic) actions letting create a system of real local self-government based on the principles and norms of the European Charter.

Experience of the transformation of other countries shows that 10-15 years are needed to get fine «tuning» of all the details and mechanisms of local self-government system. Even more time may be needed in order to instill faith and confidence that local self-government is created by the people and exists for the people.

## 4. Analysis of options

### 4.1. Option 1 “Maintaining the status quo”

This option is aimed at maintaining the status quo of the system of local self-government in the Republic of Belarus. For the ruling group there is no motivation to implement any fundamental change. It is fully satisfied with the existing system, as in the upper levels of government all decision-making authority and executive control, financial, material and human resources are concentrated. The centralized system is well designed to act in strict regimes (overcoming the crisis, suppressing dissent and dissatisfaction, neutralizing political opponents, organizing and conducting of quasi-elections, etc.).

Political parties do not have distinct requirements of local self-government reform and deliberate suggestions for its implementation, while in the program documents of some of them (the Belarusian Popular Front, the United Civic Party, the Belarusian Social-Democratic Party) there are sections devoted to local self-government.

To explain to the citizens the reasons for preservation of the existing system, the authorities often use the following arguments:

- Why change anything when everything works perfectly: there is light, water, heating, food; transport, factories, agriculture, etc. are working successfully;
- Why Europe is teaching us, we have our own way, the Belarusians have a different mentality;
- The traditions of local self-government are lost;
- The conditions for local self-government are not ready, as well as the people;
- Money is needed for the reforms, and what we have now is the crisis together with the complicated political and economic situation.

These arguments, with the help of ideological «vertical» and the state media, sound quite convincing for the majority of citizens of Belarus. They do not link the existing problems with the lack of local self-government in Belarus. In many ways, these arguments are half-truths, they are superficial and emotional, but they are simple and easily understood by most of the citizens.

But there is an underwater part of iceberg that is hidden from most people, but is extremely large. This part is the sum of all the minuses (firstly for citizens themselves) which are incorporated in the centralized model of governance, namely:

- citizens are excluded from the real opportunity to participate in the process of preparing and making decisions;
- officials do not base their actions on the interests of the population, and are guided by instructions received from higher levels of government;
- erroneous decision adopted the «upper level» is distributed throughout the country;
- executive and administrative committees are not accountable to citizens and are not beyond the control of citizens;
- the centralized model does not correspond to democratic standards of management, it inhibits the development and strengthening of state and democracy.

Both the representative and executive branches of government at the local level in the vast majority are not motivated to exercise any activity and initiative aimed at improving the living conditions of citizens, since there are no appropriate financial resources for that. In the actual absence of elections the official position of elected officials does not depend on the will of citizens. Moreover, the few examples of such activity and initiatives that have taken place among some of the chairmen of local Councils, are fraught with danger and may result in dismissal of such chairmen (examples: cities of Luninets, Fanipol, Disna, Belaazyorsk, village Perebrodye, etc.).

Changes of a centralized system towards decentralization are dangerous with complete or partial loss of control «from above» on political, economic and social processes at the local level; it actually means total or partial loss of control over society by the ruling group.

The experience of transformation in other countries also shows that one should not count on the support of reform from the side of the majority of officials, because any reform, change, innovation means increased stress and responsibility for them.

At the same time, preservation of the existing system is a serious threat to the development of society and state:

- parasitic sentiments become stronger among citizens, resulting in a significant loss of human potential and exclusion of citizens from public affairs;
- citizens' trust in local government is consistently low (according to research of IISEPS, in 2004-2010 30 - 40% of voters trusted the local Councils);
- the gap between government and citizens increases (according to research of IISEPS of March 2010 82.4% of respondents say that local authorities have virtually no effect on their lives);
- the evolutionary processes of development and improvement of the system of governance are inhibited;
- the integration processes with Europe are postponed for indefinite time;
- the lag in the development of the country's democracy in general, and at the local level in particular also increases.

The main purpose of Option 1 is retention of power by the ruling political group.

## 4.2. Option 2. Imitation of reforms.

This option involves actions to simulate the reform, i.e. actions that are formally aimed at upgrading the existing system, but essentially change nothing.

The motivation for such actions may be, above all, the complex political and economic situation and, therefore, an urgent need to obtain credit and to attract investments (including financing the reform itself), and it would unlikely happen without a dialogue with the EU and the presence of programs of reforms in various fields. Imitation of reforms in sphere of local self-government can be a part of such a program.

The main recipients of Option 2 are the EU, the Council of Europe, United States, IMF, EBRD and other international structures. It is clear that Option 2 may not last long, as within a maximum of 2-3 years it would become clear that the actions on implementation of this Option are just a simulation of preparing to the reforms.

It is clear that implementation of Option 2 may result in the loss of confidence in the authorities of Belarus, and the question appears if it is worth risking the trust for one or two years of relative «prosperity»? But, as experience of the «thaw» of 2009-2010 shows, for keeping the power and addressing the political and economic problems (even for a short period), all methods are possible to use.

However, Option 2 gives the ruling group a good opportunity to explain to the citizens why we should reject the reforms: «we have done a lot, but the West requires what an alien to our people, what our people are not ready to» (e.g., decentralization), and again blame the West in all the problems.

In addition, the concept of reform can be made in such a way that the proposed model will be only a variety of existing system. One can disagree with the analysis of the Belarusian legislation in regards to the principles and norms of the European Charter (or question this analysis, or accuse the Council of Europe experts in bias).

So this way or another, the government would be able to explain its actions, including the failure of implementation of the earlier declared intentions and decisions. The existing model of local self-government will not face any significant changes.

## 4.3. Option 3 «Reform».

This option is aimed at preparation and implementation of the real reform. In fact, it is a list of basic transformations of organizational nature and, as well as the preparation and adoption of relevant decisions - amendments to the Constitution, the adoption of a number of laws by the Parliament, signing a number of decrees by the President and the government etc. followed by their introduction into routine practice.

Now it is difficult to identify specific state agencies that should be responsible for the execution of the decisions included in Option 3 (the structure of the government, the Presidential Administration can be changed, as well as their responsibilities). In the case of creation of the Ministry of Regional Development and Local Self-Government the main burden of implementation of the reform would be put on this ministry.

The strategic objective of Option 3 is to prepare all the institutions of government, civil society and citizens to a full-scale reform of local self-government and to implement the reform successfully. The tactical objective is to select the solutions, methods and forms of work that would avoid a situation of chaos, boycotts and bureaucratic waste of time during the implementation of reform, avoid gross errors, and minimize resource costs needed for the reform.

To implement the option 3 the political will, courage, absolute understanding the necessity of reforms and belief in them are needed. It is necessary to get the political support for the reform both inside the country and outside it (the EU, the Council of Europe, international organizations and foundations, neighboring countries etc.). There would be needed a detailed economic and social forecasts for the reform period, transfer of a part of the state property to communal one, changing of budget relations, tax transfers etc.

The process of implementation of Option 3 also implies activity aimed at education of professionals and managers in the sphere of local self-government. The preparation and implementation of real reform of local self-government would need involvement of high quality Belarusian and international experts and professionals.

When realizing the Option 3 there could be the following threatening factors:

- Resistance of civil servants ("half-hearted" measures fixed in laws, presidential decrees, the Council of Ministers resolutions, overbureaucratic procedures, discreditation of the idea of reform among the citizens through local distortion of its goals and objectives);
- Mistakes and failures done at the stage of making strategic and tactic decisions;
- Conflict of interests both at the horizontal dimension (between different bodies of state government) and at the vertical dimension (between state government and local self-government bodies) during the processes of decentralization and deconcentration;
- Fear of changes and as a consequence absence of support of reform by some part of the citizens;
- Personnel deficit for the reform.

In conclusion we would like to make two more notes:

The Option 3 cannot be implemented by the current ruling group since the idea of local self-government is alien to it and destroys all the system of governance existing now.

The initiators of reforms take great political responsibility for its successful implementation, because the idea of local self-government itself must not be discredited, since at the certain period it would lead to rejection of the reforms in general. In this case the development of the whole country would be stopped for several more decades.

The expected duration of reform realization is 3-4 years.

# 5. Conclusions and recommendation.

## 5.1 Conclusions

5.1.1. The current model of local self-government does not correspond to the European Charter of Local Self-Government.

The discrepancies have such a fundamental and systematic character that experts state the factual absence of local self-government in Belarus, and evaluate the existing Councils of deputies as quasi structures not really influencing the solution of local issues.

5.1.2. The Republic of Belarus is the only country in Europe, which did not sign the European Charter of Local Self-Government and de jure is not obliged to implement it. But from the point of view of development and strengthening of statehood, recognition of the European standards and values, cooperation with the Council of Europe, the European Union, the International Monetary Fund and other European structures it is necessary to join the Charter.

5.1.3. The system of local self-government of the Republic of Belarus is based on the state local self-government theory, which does not correspond to the democratic standards of governance and contains signs of violation of the paragraph 1 of the article 1 and the paragraph 1 of the article 3 of the Constitution of the Republic of Belarus.

5.1.4. Out of three described scenarios in the local self-government the most probable to happen seems to be the Option 1. It resembles the vision and interests of the ruling group on how to govern the country in general and local self-government in particular.

5.1.5. There is also a possibility to Option 2 to become reality, but even the “imitation of reforms” may conceal the danger for the existing regime, since it destroys (first of all among nomenclature) the belief in correctness and firmness of the chosen path.

Besides, the implementation of the Option 2 requires its public discussion (and reasoning of its necessity and profitability), and it could be perceived by part of nomenclature, civil society structures, citizens as a real promise and to become the trigger for real and uncontrolled from above changes as it happened with “perestroika” and publicity (“glasnost”) in the 90s.

Nevertheless, in the situation of political pressure and deep economic crisis the Option 2 is possible as a result of diplomatic games and hope for potential economic benefit.

5.1.6. Taking into account the strict position of Minsk in less fundamental and painful issues for ruling regime (for example, the Eastern Partnership programme), one can presuppose that in case of readiness of official Minsk to realize the Option 2, the reaction of the EU, the Council of Europe and other international structure (international foundations, sponsor organizations etc.), the ruling political elites of the neighboring countries would be most likely very positive.<sup>4</sup> In the opposite case the realization of Option 2 scenario loses any sense for the official Minsk.

5.1.7. The most optimal is the Option 3. But this is a scenario for other, new government, since it is based on the position of democracy development in general and implementation of principles and norm of the European Charter of Local Self-Government in particular.

5.1.8. Making any decision on implementation of any out of proposed scenarios (including the Option 1) is impossible without the sanction of the President. At the same time in the environment of the President there is no one who would explicitly publically the idea of local self-government reform. Nevertheless, it does not mean that such a person cannot exist in principle.

4. First of all, the positive reaction should be understood as possibility of giving the financial support. At the same time the condition of the release of all political prisoners remains obligatory and is not discussed here.

## 5.2 Recommendations

5.2.1. In the situation when the power does not want to implement and develop the local self-government, it is crucially important to form and develop the civil society structures working in the sphere of local self-government (NGOs, territorial local self-government bodies, mass media). Nowadays there are only 3-4 NGOs working in this sphere.

For local self-government development the first objectives of such organizations should be:

- Enlightening and educational activity targeted at the citizens;
- Development of professionals among the youth and students;
- Development of cooperation with the local Councils (and individually with the deputies) and the executive committees;
- Analytical and research activity;
- Informing the Belarusian society and international organizations on the processes ongoing in the sphere of local self-government;
- Monitoring and analysis of the national legislation on local self-government;
- Preparation and publishing (предлог не нужен) books about local self-government, publication of articles in the mass media about the local authorities work (including the comparison with the other countries and their experiences).

5.2.2. The political parties should more actively inform the citizens on the meaning of local self-government for them and on their plans and propositions in this sphere.

5.2.3. The EU, the Council of Europe, and other international structures should complete their demands of respect of human rights and freedoms, the freedom of press, with the requirement to join the European Charter of Local Self-Government. The development of local self-government should become one of the priority directions of the international help and international organizations' activities.

5.2.4. When preparing the scenario of reforms, it should be considered that the time limit for the basic reforms (decentralization, formation of communal property, changing of budgetary sphere) should not exceed 5 years.

5.2.5. There are cases when some international organizations preliminary cause the cooperation with Belarus in the sphere of local self-government by demands on compliance with a number of other international documents and standards, thus averting the development of local democracy a secondary role.

5.2.6. It is reasonable and useful for the international organizations to initiate holding in Belarus conferences, seminars, round tables, organization of study visits abroad for local self-government professionals, political top management, chairmen of the Councils, NGOs representatives.

5.2.7. The current reform supporters (the oppositional political parties and NGOs) do not have any administrative resource; they do not have any elaborated strategy and tactics of local self-government reform and even more the experience of its implementation. In this connection it is very important to work on the preparation of relevant experts and professionals, as well as elaboration of possible scenarios of reform implementation.



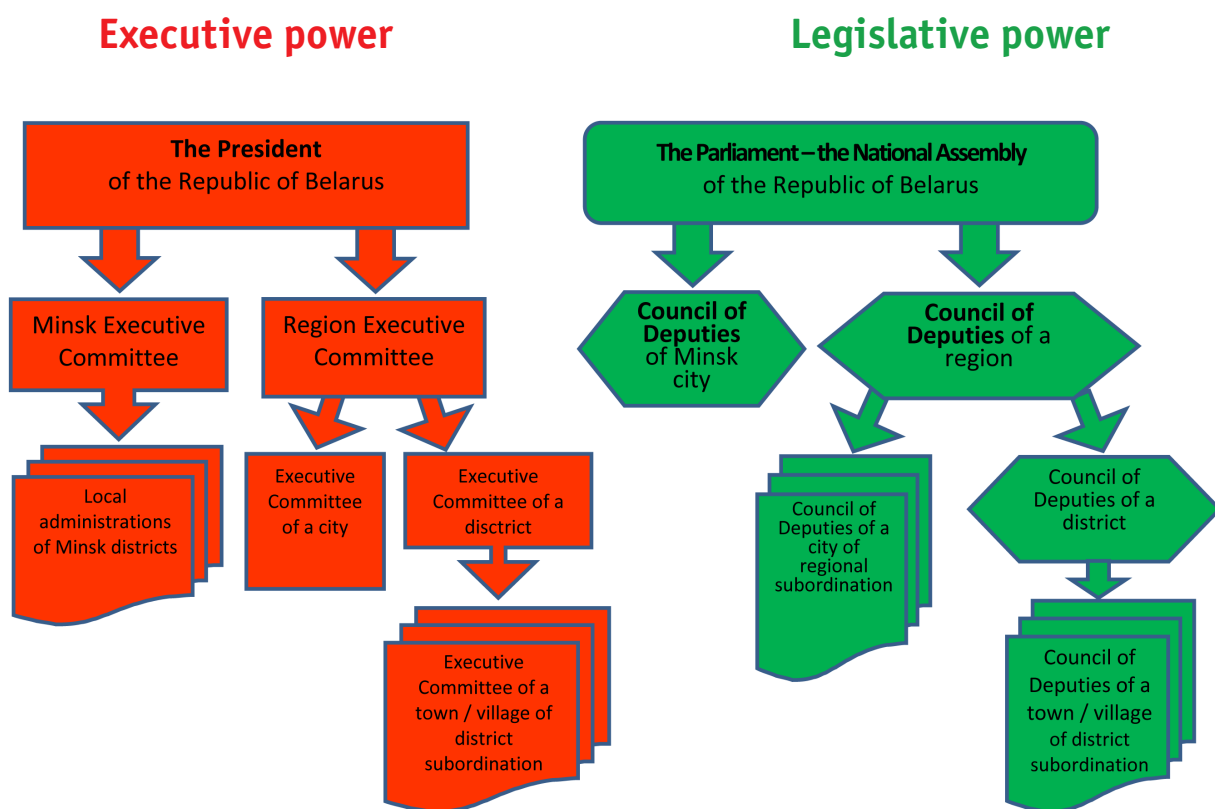
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# Annex 1

## Figure 1

The constitutional model of organization of power in the Republic of Belarus



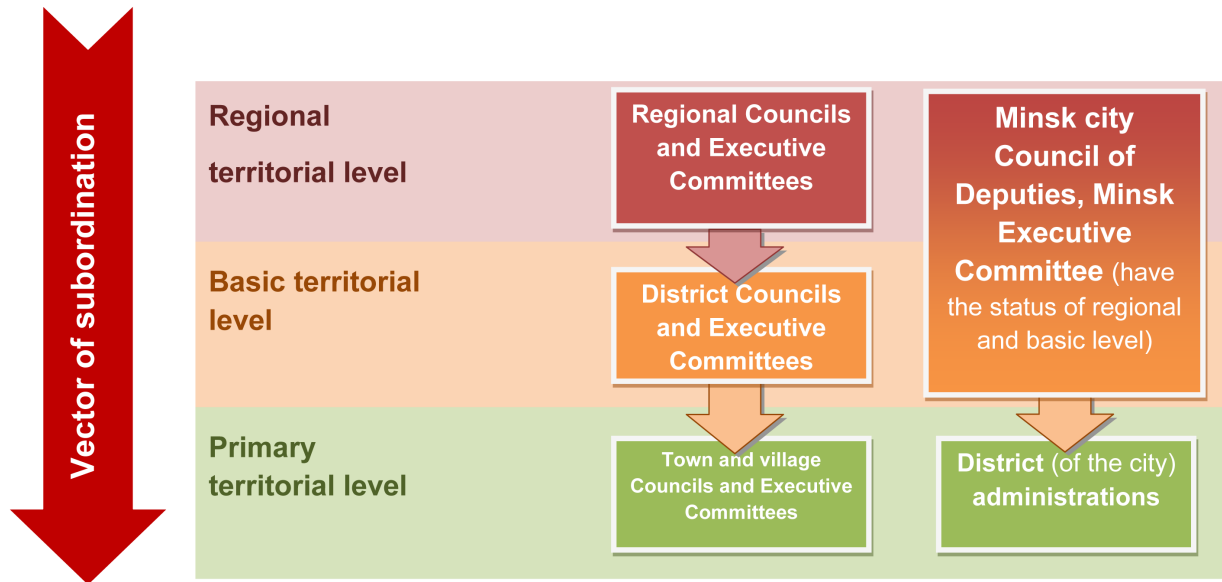
# Annex2

## Table 1

European Charter of Local Self-Government	The Constitution of the Republic of Belarus	Comments
<p>Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. (Paragraph 1 of the Article.3 - Concept of local self-government).</p>	<p>Citizens shall exercise local government and self-government through local councils of deputies, executive and administrative bodies, bodies of public territorial self-government, local referenda, assemblies and other forms of direct participation in state and public affairs. (Article 117).</p>	<p>Completely contrary approaches. The Charter says about the affairs in the public interest, and the Constitution of the Republic of Belarus gives the priority to state affairs.</p>
<p>This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. (Paragraph 2 of the Article.3 - Concept of local self-government)</p> <p>Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management. (Article 6 - Appropriate administrative structures and resources for the tasks of local authorities).</p>	<p>The heads of local executive and administrative bodies shall be appointed and dismissed by the President of the Republic of Belarus or to the order determined by the latter, and their appointment shall be subject to the approval of the local councils of deputies. (Article 119).</p>	<p>The Charter establishes the complimentary character of executive and other bodies in relation to the Councils, and says about the rights of Councils to determine the structure of these authorities. The Constitution of the Republic of Belarus includes in fact the local executive and administrative bodies into the system of state governance, which is subordinated to the President, who may himself either to appoint and dismiss the heads of these bodies, or to set the order of appointment of the heads of these bodies by the Councils of Deputies.</p>
<p>Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. (Paragraph 1 of the Article.3 - Concept of local self-government).</p>	<p>Decisions of local councils of deputies that are contrary to the law shall be reversed by higher representative bodies. Decisions of local executive and administrative authorities that are contrary to the law shall be reversed by the relevant councils of deputies, superior executive and administrative bodies and the President of the Republic of Belarus. (Paragraph 2 and 3 of the Article 122)</p>	<p>The Charter says that the local self-government shall be responsible under the law. The Constitution of the Republic of Belarus establishes the possibility of cancellation of decisions of local authorities by higher bodies outside the judicial process.</p>

# Annex 3

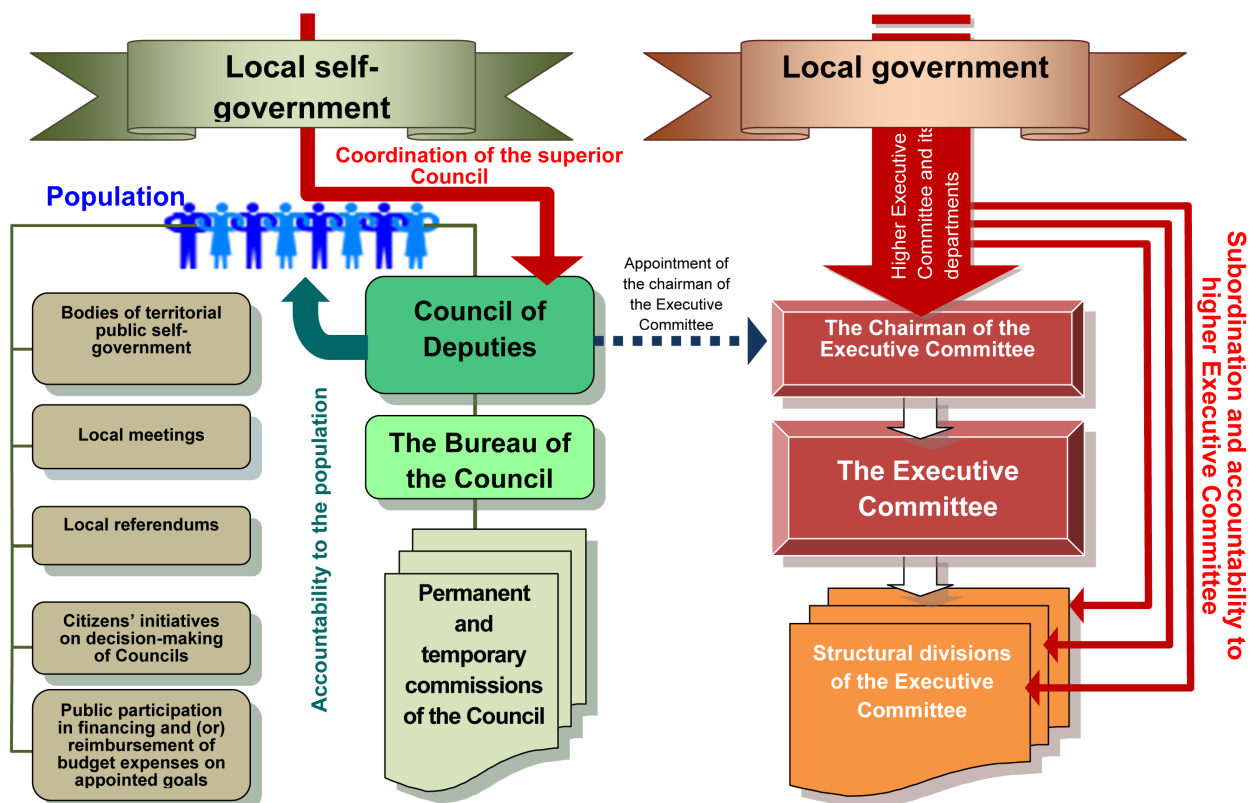
## Figure 2



# Annex 4

## Figure 3.

### The organizational structure of local power in the Republic of Belarus



# Annex 5

## Table 2.

### Article by article analysis of the compliance of the provisions of the Law “On Local Government and Self-Government in the Republic of Belarus” with the provisions of the European Charter of Local Self-Government

The Law	Comments	The Charter
CHAPTER 1 GENERAL PROVISIONS		Part I
Article 1. Concept of local self-government and system of its institutions		Article 3 – Concept of local self government
1. Local self-government is a form of organization and activity of people, living on the corresponding territory (below, if another does not mentioned, - citizens), for self-dependent or through the power of elected body solutions of social, economic and political local issues according to the nationwide interests and the interests of citizens, features of political subdivisions development on the basis of its own material and financial resources and borrowed funds.	1. There we see fundamentally different approaches to the definition of the notion of self-government. In the Charter it is the right and the ability of local authorities. In the Law it is a form of organization and activity of population. One can and must fight for the right. The form can be changed without changing the content. 2. In the Charter it comes to public administration in the interests of the population. In the Law the interests of population are complemented with the nationwide state interests. Such approach contradicts the nature of local self-government: being local, it cannot have nationwide interests as a basis. Besides this, in a democratic state with a multiparty system at a certain moment of time the interests of the ruling party can contradict the interests of local communities. This is often the reason of changing the central government or changing state interests.	1. Local self government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
1. Local self-government shall be exercised by Council of Deputies (below – Council), bodies of the territorial public self-government, local assemblies, local referendums, citizens` initiatives to Councils` decision making, citizens` participation in funding and (or) reimbursement of expenses for goals defined by them and forms of citizens` participation in state and public affairs.	In this case the right of the Councils to create their own executive bodies is missing. Since later in the Law independent from Councils executive bodies are described, it is obvious that this norm of Law does not reflect the spirit of the Charter. In particular, the Charter does not suppose the existence of any local executive bodies beyond the responsibility of the Councils elected by the population.	2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

The Law	Comments	The Charter
2.	Paragraph 2 of this Article is excluded from analysis as insignificant for comparison with the Charter provisions.	
Article 2. Concept of local government and system of its institutions		
1. Local government is a form of organization and activity of local executive and administrative bodies (below – executive and administrative bodies) for solving the local issues according to the national interests and interests of the citizens.	The notion of local government as an independent institute of local power is absent in the Charter. Moreover, the Charter limits the local power by Councils elected by the population, and the executive bodies of theirs, if needed. In this connection all the norms of the Law regarding local government one should consider as laying beyond the scope of the notion of self-government as understood in the Charter.	
2.	Paragraph 2 of this Article is excluded from analysis as insignificant.	
<p>Article 3. The main principles of local government and self-government</p> <ul style="list-style-type: none"> <li>• The unity and integrity of the system of local government and self-government</li> <li>• Interaction of the bodies of local government and self-government</li> <li>• Distribution of competencies of local government and self-government</li> <li>• Election of bodies of local self-government and accountability to citizens</li> <li>• Publicity and responsiveness to public opinion, regular informing citizens about decisions made and the most important local issues</li> <li>• Responsibility of bodies of local self-government for legitimacy and validity of decisions made</li> <li>• Obligation of execution of decisions of Councils, executive and administrative bodies, made within their competence, on the appropriate territory</li> <li>• Autonomy and independence of bodies of local self-government within the limits of their competence in solving local issues, exclusion of limitation of authorities of local government and self-government bodies, except the cases provided in this Law and other legislative acts.</li> </ul>	<p>In general, the definition of the principles of the local self-government is a sovereign matter of a legislator. But such a principle as “the unity and integrity of the system of local government and self-government” because of the reasons mentioned above cannot be considered as correspondent to the Charter spirit, as the Law separated notions of local government and local self-government, and drew a line between local government bodies and local self-government bodies on the basis of accountability. So the Council is accountable to the population, and the executive committee is accountable to the higher executive body. In this situation it is difficult to provide the unity and integrity of these two bodies.</p> <p>It should be noted separately that the principle of autonomy and independence of local self-government bodies declared in this Article, contradicts the provisions of paragraph 5 of Article 11 of the same Law where the obligatory character of coordination between lower Councils with the higher Councils is established.</p>	

The Law	Comments	The Charter
Article 4. Legal foundation of local government and self-government	Article 4 is insignificant for the analysis.	
Article 5. The role of Councils, executive and administrative bodies in improvement of the work with citizens and juridical entities Article 6. The role of Councils, executive and administrative bodies in providing social protection of citizens	Article 5 and 6 do not contain legal norms to compare with the Charter norms. They are in fact administrative regulations describing the general algorithm of interactions between bodies of local government and self-government.	
Article 7. Association of Councils. National Association of Local Councils of Deputies		Article 10 – Local authorities' right to associate
1. For effective implementation of its power, protection of both interests and mutual assistance in solving local issues, other contribution to implementation of functions of local self-government, the Councils have right to create unions in form of associations of Councils. Associations of Councils and Minsk City Council have right to create National Association of Local Councils of Deputies.	The norms of the Law comply with the provisions of the Charter in declaration of the right to associate in order to protect and promote the general interests of local self-government bodies. At the same time the Charter provides two more types of association: creation of consortiums with other local institutions and joining international associations of local authorities.	1. Local authorities shall be entitled, in exercising their powers, to co operate and within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
State registration of associations mentioned in part one of this paragraph shall be implemented in a manner prescribed by legislation for associations (unions) of nonprofit organizations. 2. Associations, mentioned in part 1 of paragraph 1 of this article, are juridical entities whose property is formed from member fees and other sources according to the law. Funding of activities of these organizations is implemented at the expense of financial sources owned by them and other properties, including received from the revenue-generating activities, grant (sponsor) help and other sources not forbidden by law.	Кроме того, Хартия говорит о праве местных властей устанавливать прямые контакты с коллегами в других государствах. Эти нормы Хартии служат повышению открытости местных властей и интенсификации обмена опытом в решении вопросов местного значения.	2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State. 3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co operate with their counterparts in other States.
Article 8. Council for cooperation of bodies of local self-government under the Council of Republic of the National Assembly of the Republic of Belarus.	This Article does not require complying with the Charter provisions because does not contain the norms on establishment or abolition of local self-government rights.	



The Law	Comments	The Charter
CHAPTER 2 THE COUNCILS		
Article 9. The Councils		Article 3 – Concept of local self government
1. The Councils are representative state bodies created according to the law on the territory of appropriate administrative-territorial subdivision and are the main chain in the local self-government system.	Formulated in this way the norm of the Law contradicts the spirit of the Charter and the nature of the local self-government. In accordance with the Charter the local Councils represent the local population, not the state. Public is considered here as state, but belonging to the society. But at the same time paragraph 3 of this Article says that the Councils are accountable to the population, not to the state. Our analysis of a number of norms of the Budget Code of the Republic of Belarus shows that giving to the Councils the status of state bodies is a part of conceptual approach based on denial of state from local autonomy (see more on this in comments to Chapter 6 of the Law).	1. Local self government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. The Councils exercise their powers according to the Constitution of the Republic of Belarus, present Law and other legislation acts.		
3. The Councils are accountable to citizens in their activities, and responsible to them.		
4. The Councils are the juridical entities.		
Article 10. Council elections. Term of authority of the Council.	There are no discrepancies with the Charter.	
Article 11. Activities of the Council ...5. The higher Councils coordinate the activities of the lower Councils and their bodies, provide methodical and organizational assistance.	In Articles 11-16 the order of activities of the local Councils and their bodies (Presidium and permanent commissions) is described in detail. Such a detailed regulation of Councils' activity does not generally conflict with the Charter provisions, but diminishes the principle of independence of local self-government bodies established by paragraph 3 of this Law. Below there is an analysis of some provisions of these Articles which more or less contradict the Charter provisions. So paragraph 5 of the Article 11 does not give much independence: it establishes the institute of coordination of activities of lower Councils with the higher ones. The paragraph 3.2 of the Article 12 obligates to call a session on demand of the President of the Republic of Belarus or higher Council, and this violates the principle of independence of the Council and its accountability and responsibility to citizens. In this case we see accountability and responsibility of the Council to the higher state authorities.	
Article 12. Council session 3... Council session is convened by the presidium of the Council or the chairman of the Council: ...3.2. on the request of the President of the Republic of Belarus or higher Council – in case of infringement of rights and legitimate interests of citizens by the Council, and other violation of the law		
Article 13. The Council decisions Article 14. Formation of the Council body Article 15. The presidium of the Council Article 16. The permanent commissions of the Council		

The Law	Comments	The Charter
Article 17. The competence of Council	The competence of the Councils is established by the Articles 17-20 of current Law. The competence of executive committees – by Articles 41-44 of this Law. Since the principle of empowerment of the Councils and executive committees is the same in this Law, we would only analyze only the Council competences. Herewith the object of research would be not the competences themselves, which could be defined by certain state at its discretion, but the principle of relations between the Councils of different levels.	Article 4 – Scope of local self government
1. The Councils within their jurisdiction in the manner prescribed by legislation: 1.27. cancel orders of the chairman of the Council and the chairman of corresponding executive committee, solutions of the corresponding executive committee, solutions of lower Council and orders of its chairman, in case they are not appropriate to the legislation;	The Law establishes the list of rights and obligations of the local power. But the principle of cross-subordination does not comply with the Charter principle of freedom of local authorities as the cancellation of unlawful decisions is assigned to other (higher) bodies of local government and self-government. Generally in this Law court is absent as an instance to decide presence of violations of law in local authorities' activities. Besides this, the analysis of competences of all three levels of local power shows that the biggest number of credentials to solve local problems is given to regional level which is the farthest from the citizens. The credentials of the primary level are too limited and reduced in fact to maintenance of the territories.	1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law. 2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority. 3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy. 4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
Article 18. Special competences of the Councils of regional level Regional Councils within their competence in the manner prescribed by legislation: provide balance of the budgets of administrative and territorial units on the appropriate territory;	It is the only mentioning of procedures of equalisation in this Law. It appears that this formulation is obviously not enough to get clear impression on forms and procedures of redistribution of budget resources between local authorities. This formulation gives too much place for subjectivism and putting pressure to municipalities not having own sufficient resources.	Article 9 – Financial resources of local authorities 5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
Article 19. Special competences of the basic level Councils Article 20. Special competences of the primary level Councils	There is no subject for analysis.	
Article 21. The chairman of the Council	There is no subject for analysis.	
Article 22. The competence of the chairman of the Council		

The Law	Comments	The Charter
3.1. to introduce to Council consideration proposals about cancellation of orders of chairman of the appropriate executive committee, or solutions of the executive committee, or lower Council, or the lower Council chairman, which are not corresponded to the legislation;	See comment to Article 17.	
Article 23. Deputy (deputies) of the chairman of the Council	There is no subject for analysis.	
Article 24. Preterm termination of authorities (dissolution) of the Council;		Article 11 – Legal protection of local self government
1. Authorities of the Council can be preterm terminated by the Council of Republic of the National Assembly of the Republic of Belarus in case of: 1.1. systematic (more than two times) or gross breach of the legislation by the Council; 1.2. if the Council at least three times in a row did not manage to gather for session because of absence of deputies for unexcused reasons;	See comment to Article 17. Any judicial instance is absent again. Judging by the Article text, the presence of systematic of gross breach of legislation, and the reasons of non-attendance of deputies shall be defined by the Council of Republic of the National Assembly of the Republic of Belarus, and its decision is the final one. In fact the bodies of local self-government are denied the right to appeal to court in case they find the decision of the Council unlawful.	Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self government as are enshrined in the constitution or domestic legislation.
2.2. by the decision of the higher Council or the President of the Republic of Belarus – in case of changing of administrative-territorial structure in accordance with the law.	This norm says nothing on consultations with local communities while changing administrative-territorial structure. But this issue is regulated by another republican Law. See comment to the Law of the Republic of Belarus of May 5, 1998 №154-3 “On administrative-territorial division and order of solving issues of administrative-territorial structure of the Republic of Belarus” (the text as of November 1, 2007).	Article 5 – Protection of local authority boundaries  Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.
CHAPTER 3 TERRITORIAL PUBLIC SELF-GOVERNMENT		
Article 25. Territorial public self-government	There is no subject for analysis.	
Article 26. The goal and objectives of the territorial public self-government	There is no subject for analysis.	
Article 27. Bodies of the territorial public self-government		
6. The body of the territorial public self-government is accountable in its activities to the local assembly and appropriate Council	The subordination of the body of the territorial public self-government to the Council raises a big question. The deputy is accountable to the electors, the Councils – to the population. It is difficult to see any logic in the fact that the body of public association reports to the Council.	

The Law	Comments	The Charter
The control over the activity of the territorial public self-government is implemented by the appropriate Council.	A body created by the population for solving local issues is usually controlled by the population itself. It is unclear why its activity should be supervised by the Council which is accountable to the population, too.	
Article 28. Authorities of the local assembly on the establishment and activity of the body of territorial public self-government	There is no subject for analysis.	
Article 29. The membership in collegial body of territorial public self-government		
2. Candidates to the members of the collegial body of territorial public self-government can be nominated by ... city (cities with district division, cities of regional submission), township village Council, executive and administrative bodies of primary level.	In accordance with the provision of the Article 25 of this Law, the territorial public self-government is voluntary activity of people at the place of living. If it is an activity of citizens, why the Councils participate in formation of bodies of territorial public self-government?	
6. The chairman of collegial body of territorial public self-government is accountable to this body of territorial public self-government, local assembly and appropriate Council in all aspects of his or her activity.	See comment to Article 27.	
Article 30. Registration of collegial body of territorial public self-government		
2. The registration of collegial body of territorial public self-government is implemented by appropriate executive and administrative body within ten days after presentation of documents, specified in paragraph 1 of this article Executive and administrative body within five days after registration of collegial body of territorial public self-government reports about it to chairman of body of territorial public self-government in written and gives certificate of registration of collegial body of territorial public self-government.	The registration is done by executive body, and the Council is interacting with territorial public self-government bodies. Herewith the executive body is not obliged by law to inform the Council about registration of territorial public self-government body. In other words, officially the Council cannot learn about this registration fact. The chairman of territorial public self-government body is not obliged to inform the Council, too. In connection with this procedure, it is unclear how the Council should be able to control territorial public self-government activities effectively.	
Article 31. Order of activities of bodies of territorial public self-government.	There is no subject for analysis.	
Article 32. Abolition of collegial body of territorial public self-government		

The Law	Comments	The Charter
Collegial body of territorial public self-government can be abolished by the decision of: the Council in case of systematic or rood breach of thelaw.	See comment to Article 17.	
CHAPTER 4 LOCAL ASSEMBLY, LOCAL REFERENDUM AND OTHER FORMS OF LOCAL SELF-GOVERNMENT		
Article 33. Thelocal assembly		
1. Thelocal assembly is a joint presence of citizens, gathered for the discussion of state and public issues of republic or locallevel, it is the main form of the direct participation of citizens in management of public and state issues.	There is no subject for analysis.	
Article 34. Thelocal referendum	There is no subject for analysis.	
Article 35. Citizens` initiative to make decisions of the Council	There is no subject for analysis.	
Article 36. Citizens` participation in funding and (or) compensation of budget expenditure for goals set by citizens		
5. Executive committee of primarylevel provides holding at the expense of means of self-taxation events, determined bylocal assembly or body of territorial public self-government, and reports about expenses of these finances to thelocal assembly or body of territorial public self-government.	The mechanism of control over usage of money collected by the population is unclear. The executive committees are the bodies of state power, they are formed from above without participation of population. The Law does not provide anyleverages to influence executive committees by population in case the executive committee would misuse this money.	
7. Control over the order of deduction of such means of self-taxation and target use of collected money is implemented by executive committee of basiclevel.	It is unclear why the control over the spending of population money by primary level executive committees is implemented by executive committees of basiclevel, not the population.	
Article 37. Other forms of citizens` participation in state and public affairs.	There is no subject for analysis.	

The Law	Comments	The Charter
<p>CHAPTER 5 EXECUTIVE AND ADMINISTRATIVE BODIES</p>	<p>While executive and administrative bodies are not assigned by the Law to bodies of local self-government, there are no basis to consider norms that regulate their activities with the comparison to the Charter provisions. But it should be noted that namely these bodies are given the responsibility for the development and execution of local budgets, implementation of municipal plans and programmes, operational provision of utility services to the population etc. In this point there is a serious discrepancy with the letter and spirit of the Charter.</p>	
<p>Article 38. Executive and administrative bodies</p>		<p>Article 3 – Concept of local self government</p>
<p>1. Executive and administrative bodies are state bodies, which exercise their powers according to the Constitution of the Republic of Belarus, present Law and other legislation acts. 3. Executive committees of the regional level are accountable and are under the control of the President of the Republic of Belarus, as well as the Council of Ministers of the Republic of Belarus within the issues of competence of the Government of the Republic of Belarus. The executive committees of the basic and primary levels, local administrations are accountable and are under the control of the President of the Republic of Belarus and higher executive committees. The executive committees are accountable to the appropriate Councils in issues within the competence of these Councils. Higher executive and administrative bodies implement the coordination of activities of lower executive and administrative bodies, provide needed help to them, including organizational, methodical, material, technical, informational help.</p>	<p>The right of local Councils to create executive bodies accountable to them is absent in the Law. This is a serious and fundamental discrepancy with the Charter provisions. The status of the executive bodies is state one. The subordination on all matters is established in connection with the state power bodies, and only regarding the issues within the Council competence the executive committees are accountable to the Councils. The coordination of activity camouflages direct control from the top.</p>	<p>2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.</p>

The Law	Comments	The Charter
<p>8. Typical structure of regional, Minsk city, city (cities of regional submission), regional executive committees, local administrations, and the quantity of employees of the executive and administrative bodies (without security personnel and maintenance of buildings personnel) in the regions and the city of Minsk, including quantity of employees of structural units of executive and administrative bodies, are established by the President of the Republic of Belarus.</p>	<p>Here there is complete disagreement with the Charter provisions. It is not only setting the structure of executive bodies, but also defining the quantity of employees are put within the competence of the President of the Republic of Belarus. Such approach deprives flexibility of power at the local level, counteracts timely correction of its activity in accordance with the changing circumstances.</p>	<p>Article 6 – Appropriate administrative structures and resources for the tasks of local authorities</p> <p>1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.</p>
<p>9. Structural units of the executive and administrative bodies, exercising state-governmental powers in certain branches (sphere of activities) on the territory of administrative-territorial subdivision are accountable to these bodies and at the same time to the appropriate:</p> <p>9.1. republic bodies of the state administration – structural units of executive committees of regional level;</p> <p>9.2. structural units of the regional executive committees – structural units of executive committees of basic level;</p> <p>9.3. structural units of city executive committees (the cities of regional submission), Minsk city executive committee – structural units of the local administrations.</p>	<p>The executive bodies have double system of subordination:</p> <ul style="list-style-type: none"> <li>• Territorial subordination (the executive committee is subordinated to the higher executive committee)</li> <li>• Branch subordination (structural unit of executive committee is subordinated to the structural unit of higher executive committee)</li> </ul> <p>The Councils have no relation neither to executive committee structure, nor to the design of the documents regulating activity of executive committees.</p>	
<p>10. Statutes of the structural units of the executive committees of regional level, exercising state-governmental authorities in certain branches (sphere of activity), shall be approved by these executive committees in accordance with appropriate republic bodies of state administration.</p>		
<p>Article 39. Meetings of executive and administrative body</p>	<p>There is no subject for analysis.</p>	
<p>Article 40. Decisions of executive and administrative body</p>	<p>There is no subject for analysis.</p>	

The Law	Comments	The Charter
<p>Article 41. Competence of executive committees Executive committees within their jurisdiction in the manner prescribed bylaw: represent interests of appropriate administrative territorial subdivision in relationships with other state bodies, other organizations and citizens;</p>	<p>The interests of an appropriate administrative territorial unit are determined by the interests of the population living on its territory. According to the Charter, the interests of population shall be represented by local Councils. Thus, the transfer of rights of representation of interests of population to the executive bodies which are not formed by the population does not comply with the Charter provisions.</p>	<p>Article 3 – Concept of local self government  1. Local self government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.</p>
<p>implement the drafting the project of local budget and prepare the report of its execution; provide the execution of local budget, supplying of provided income and spending of budget finances in accordance to its goals; provide tax incentives, concessions on tariffs, fully paid to local budget, by the order of Councils in the manner prescribed by the President of the Republic of Belarus and its Law; dispose communal property in the manner prescribed by the Councils, and implement control over its using on the appropriate territory;</p>	<p>The approach chosen by legislator here does not correspond neither the letter not the spirit of the Charter. Looking at the list of competences of the executive bodies one can see that the state bodies manage the local budgets, the land, the incentives, the communal property, communal companies, meaning they manage everything that had to form economic and material basis of the local self-government. This state of affairs cannot be changed with the discrete edits in the Law. Speaking about following the European values of local democracy, the concept and the approach to the local self-government should be changed.</p>	
<p>Article 42. Competence features of executive committees of regional level Executive committees of the regional level within their jurisdiction in the manner prescribed bylaw: cancel lower executive and administrative bodies decisions, orders of its chairmen, if they are not appropriate to the decisions of the Council, executive committee of regional level, executive committee of regional level or other legislation acts;</p>	<p>See comment to Article 17.</p>	



The Law	Comments	The Charter
Article 43. Competence features of executive committees of basiclevel Executive committees of basic level within their jurisdiction in the manner prescribed by law: cancellower executive and administrative bodies decisions, orders of its chairmen, if they are not appropriate to the decisions of the Councils, executive committee of basiclevel, executive committee of regionallevel, took within its competence, or other legislation acts;	See comment to Article 17.	
Article 44. Competence features of executive committees of primarylevel	There is no subject for analysis.	
Article 45. Local administrations competence	There is no subject for analysis.	
Article 46. The chairman of executive committee	The articles 46-53 in fact describe relations between chairmen of executive bodies of differentlevel in rigid hierarchic vertical system of the executive power headed with the President of the Republic of Belarus. From this point of view the analysis of these articles does not add anything to the previous judgment. This type of organization of thelocal power does not have anything in common with the Charter.	
Article 47. Competence of the chairman of executive committee		
Article 48. Competence features of the chairman of regional executive committee		
Article 49. Competence features of the chairman of executive committee of the basiclevel		
Article 51. The chairman of local administration		
Article 52. Competence of the chairman oflocal administration		
Article 53. The disposals of the chairman of executive committee (the chairman of thelocal administration)		
CHAPTER 6 ECONOMIC BASE OF THE LOCAL GOVERNMENT AND SELF-GOVERNMENT		
Article 54. The concept of economic base oflocal government and self-government Economic base oflocal government and self-government consists of communal property, income from using natural resources and other sources of getting income of local government and self-government	It should be noted that there is no such notion aslocal taxes in this Law. This notion is absent also in the Budget Code which would be analyzed separately.	Article 9 – Financial resources oflocal authorities  3. Part atleast of the financial resources oflocal authorities shall derive fromlocal taxes and charges of which, within thelimits of statute, they have the power to determine the rate.

The Law	Comments	The Charter
in accordance with the legislation on environmental protection and rational usage of natural resources, civil, tax and budget legislation.		
Article 55. Communal property	Common remark on this Article: the communal property is being administrated by executive committees, bodies which are not elected by the population and are not formed by local Councils.	
Article 56. Relationship between the Councils, executive and administrative bodies and other organizations in economic sphere	There is no subject for analysis.	
Article 57. Participation of the Councils, executive and administrative bodies in foreign economic activities	There is no subject for analysis.	
CHAPTER 7 GARANTEES, SUPERVISION AND RESPONSIBILITY IN THE SPHERE OF LOCAL GOVERNMENT AND SELF- GOVERNMENT		
Article 58. Participation of bodies of local government and self-government in work of interdepartmental commissions	There is no subject for analysis.	
Article 59. Law enforcement		Article 8 – Administrative supervision of local authorities' activities
<p>2. The decisions of the Councils which are not appropriate to the legislation shall be cancelled by the higher Councils, the Council of Republic of the National Assembly of the Republic of Belarus, or suspended by the President of the Republic of Belarus. In case of suspending of the decision of the Council the President of the Republic of Belarus presents cancellation of this decision to the Council higher than the Council which decision is suspended, or to the Council of Republic of the National Assembly of the Republic of Belarus.</p> <p>The decisions of the chairmen of the Councils which are not appropriate to the legislation shall be cancelled by the higher Council, the Council of Republic of the National Assembly of the Republic of Belarus, or suspended by the President of the</p>	<p>It is obvious that in most cases dealing with basic or primary level of local self-government the intervention of the President of the Republic of Belarus may be considered as disproportionate to the interests to be defended. Moreover, the principle of extrajudicial cancellation of decisions is hardly consistent with the principle of supervision. Supervision supposes observation, identification of inconsistencies to the legislation, appeal to the body which passed the illegal decision with the proposal of its removal, and in case of denial – appealing to the court.</p> <p>The Law establishes a priori right of the higher state bodies and officials to cancel the decisions of lower Councils and officials, which does not comply with the notion of supervision. Therefore in this case the Law is not based on the principles established in the Charter.</p> <p>There is no sense to analyze paragraphs 4 and 5 of this Article because they are devoted to cancellation of decision of bodies of local government – executive committees which are the part of executive power vertical. But here the principle of extrajudicial cancellation of decisions does not comply with democratic states practice, too.</p>	<p>1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.</p> <p>2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher level authorities in respect of tasks the execution of which is delegated to local authorities.</p>

The Law	Comments	The Charter
<p>Republic of Belarus. In case of suspending of the decision of the chairman of the Council the President of the Republic of Belarus presents cancellation of this decision to the appropriate Council or the Council higher than the Council which chairman's decision is suspended.</p>		<p>3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect</p>
<p>7. The Councils have the right in the prescribed manner apply to the court to protect violated or disputed rights or interests protected by law to provide free implementation of their authorities, provided by present Law and other legislative acts.</p>	<p>This paragraph of the Article complies almost word by word with the Charter provisions. But the text of the previous paragraphs of the Article establishes the extrajudicial procedure of cancellation of decisions of local self-government bodies. Extrajudicial authorities determine the presence of violation of law in actions of lower bodies of local self-government at their discretion, and cancel the decisions that they find illegal.</p>	<p>Article 11 – Legal protection of local self government</p> <p>Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self government as are enshrined in the constitution or domestic legislation.</p>
<p>Article 60. Obligatory character of decisions of local government and self-government and protection of their rights</p>	<p>There is no subject for analysis.</p>	
<p>Article 61. Delegation of powers by local government and self-government bodies</p> <p>2. Higher executive and administrative bodies have the right to delegate a part of their powers to lower executive and administrative bodies.</p> <p>3. If other is not provided by law, the Councils have the right:</p> <p>3.1. to delegate to each other certain powers along with the resources necessary for their implementation by mutual agreement of Councils of different territorial levels.</p>	<p>In this Law there are no provisions establishing limits of freedom levels when adapting the powers delegated. But in the Budget Code of the Republic of Belarus there are such limitations which in fact nullify opportunities of flexible approach to implement the delegated powers.</p>	<p>Article 4 – Scope of local self government</p> <p>5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.</p>
<p>Article 62. Proposals of the bodies of local government and self-government</p> <p>The state bodies, other organizations, officials consider the proposals of bodies of local government and self-government in the manner prescribed by law on the complaints of citizens and legal entities, except cases when legislation establishes the other order of consideration of such proposals.</p>	<p>This Article with a certain approximation could be assigned to the norms guaranteeing consulting with the local self-government bodies. The reference to the legislation on citizens' and legal entities' appeals gives some hope that there is a mechanism of considering local power's opinion in this legislation. But neither in the Law «On citizens' appeals» of June 6, 1996 N 407–XIII (published in Bulletin of the Supreme Council of the Republic of Belarus, 1996, N 21, page 376) as amended of November 1, 2004 N 340–3 (published in the National Register of Legal Acts of the Republic of Belarus, 2004, № 189, 2/1089), or in the Presidential Decree № 498 of November, 15 2007 «On additional measures on work with the appeals of citizens and legal entities» we failed to find not only such mechanisms, but any mentioning on local self-government bodies.</p>	<p>Article 4 – Scope of local self government</p> <p>6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision making processes for all matters which concern them directly.</p>

The Law	Comments	The Charter
Article 63. Supervision after exact and unified execution of law in sphere of local government and self-government	There is no subject for analysis.	
Article 64. Responsibility of bodies of local government and self-government	There is no subject for analysis.	
		Article 6 – Appropriate administrative structures and resources for the tasks of local authorities
	There is no any mentioning of municipal service in the Law.	2. The conditions of service of local government employees shall be such as to permit the recruitment of high quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.
		Article 7 – Conditions under which responsibilities at local level are exercised
	Not specified in the Law.	1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
	Not specified in the Law.	2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
	Not specified in the Law.	3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.
		Article 9 – Financial resources of local authorities
	Not specified in the Law.	1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
	Not specified in the Law.	2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
	Not specified in the Law.	4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
	Not specified in the Law.	6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
	Not specified in the Law.	7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
	Not specified in the Law.	8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

# Annex 6

## Table 3.

### Article by article analysis of the compliance of the provisions of the Budget Code of the Republic of Belarus with the provisions of the European Charter of Local Self-Government

The Law	Comments	The Charter
<p>Article 28. Regulatory revenues of the republican budget and local budget</p> <p>1. The regulatory revenues of republican budget and local budgets are the revenues which may partially or fully be transferred to other budgets, and according to which in a manner prescribed by Article 30, 32 and 34 of present Code there is an established standard in the form of top-level contributions from the income taxes, as well as local taxes and fees according to the standards defined by the local Councils of deputies.</p>	<p>The Budget Code establishes the note of local taxes and fees, and gives the right to set their rates to the local Councils. From the first sight, this approach complies with the Charter norms. But the normative principle of formation of the budget costs which is implemented in Belarus, nullifies the right to set local taxes, because all the funds which exceed the estimated revenues of the local budgets, after financial year end are to be taken to the state budget.</p>	<p>Article 9 – Financial resources of local authorities</p> <p>3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.</p>
<p>Article 29. Formation of revenues of republican budget and local budgets</p> <p>1. The revenues of the republican budget and local budgets for the next financial year are defined in accordance with present Code and other legislation acts.</p> <p>2. The revenues of republican budget are formed by own revenues, regulatory revenues, which are partially not transferred to lower budgets by established standards of deductions, and interbudgetary transfers.</p> <p>The revenues of local budgets are formed by own revenues, regulatory incomes which are partially not transferred to lower budgets by established standards of deductions, deductions from regulatory revenues from higher budgets, and interbudgetary transfers.</p>	<p>The own revenues of the local budgets consist of tax and non-tax revenues. The tax revenues are: revenues from state taxes and revenues from local taxes and fees. The Budget Code describes in detail the structure of the state tax sources and says almost nothing on local taxes and fees. In connection with this it is difficult to determine which part of the state revenues is composed with the help of the local taxes and fees. It is difficult to speak also about sufficiency of own financial resources of the local powers for implementation of their competences.</p> <p>The main problem is that the structure and volume of the local powers' revenues are not stable and depend greatly on year decisions on republican budget approval.</p>	<p>Article 9 – Financial resources of local authorities</p> <p>1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.</p> <p>2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.</p>

The Law	Comments	The Charter
<p>Article 65. Local government and self-government bodies debt</p> <p>2. Local government and self-government bodies debt may exist in the forms of:</p> <p>...2.2.loans, realized through the issue of securities by local executive and administrative bodies;</p> <p>...</p>	<p>The Budget Code does not give the right of access to the national market of capital to the local self-government bodies. This right is given only to the local executive and administrative bodies which are not the bodies of local self-government and are part of the system of vertical state power subordinated directly to the President of the Republic of Belarus.</p> <p>But even if theoretically attribute the local government bodies to local self-government ones, in this case their access to the national capital market is hardly possible, too. The Law of March, 12, 1992 №1512-XII «On Securities and Stock Exchanges» does not give the right to become securities issuer for the local government bodies. Probably, there are other normative legal acts to regulate this sphere, but we failed to find them.</p>	<p>8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.</p>
<p>Article 74. The rights of government bodies in provision of interbudgetary transfers to lower budgets</p> <p>In cases when local executive and administrative bodies violate procedures established by law in the sphere of enrollment of taxes, fees and other revenues in higher budget or when they misuse the funds allocated from the higher budget, or have arrears of payments to higher budgets – the interbudgetary transfers sent from higher budgets to lower budgets are suspended or reduced by these amounts</p>	<p>The Budget Code establishes the strict frameworks in the budget sphere describing both the sources of local budget revenues and tax rates for all the budget forming taxes. The significant part of the local budget revenues is formed as subventions having target character.</p> <p>The local government bodies are responsible not only for filling the budget, but also for forming the state budget, providing transfer of the taxes and fees to the higher budgets. The interbudgetary transfers are used by the central government as sanction for the violation which are fixed extrajudicially. In connection with this there is no sense to speak about diversification and flexibility of local financial systems.</p>	<p>Article 9 – Financial resources of local authorities</p> <p>4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.</p>
<p>Article 75. The forms of interbudgetary transfers</p> <p>2. Subsidy from higher budgets to lower budgets is provided in case of excess of forecasted expenditure of local budget over forecasted revenues. Subsidy from higher budgets to lower budgets may be provided only after accounting in full lower budget own revenues and regulatory revenues on the standards of deductions of revenues needed to balance the budget as defined by Articles 30-37 of this Code.</p> <p>3. Interbudgetary transfer from lower to higher budget is passed in case of excess of forecasted revenues over forecasted expenditures of the lower budget.</p> <p>4. The amount of interbudgetary transfers in form of subsidies for a planned period of time is based on the difference between</p>	<p>The Budget Code does not contain such notion as “financial equalisation” or “equalisation of level of budget security”. Instead there are notions of “budget transfer” and “subsidy”.</p> <p>Since the distribution of the main part of tax revenues is given to the central government, in Belarus there are no mechanisms of equalization: they are replaced from one hand by the mechanism of withdrawal of additional financial resources which exceed the calculated revenues of the local budget, and from the other hand – by the mechanism of repayment of deficit, if the calculated revenues of the local budget is lower than the calculated level of the expenditure of the local authorities.</p>	<p>5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.</p>

The Law	Comments	The Charter
<p>forecasted revenues and forecasted expenditures of the correspondent local budget</p> <p>5. The forecasted revenue of the local budget is calculated taking into account the tax potential of administrative and territorial unit.</p> <p>The forecasted expenditure of the local budget is calculated taking into account the standards of budgetary provision and correction indicators of standards of budgetary provision.</p>		
<p>Article 76. Calculation of expenses taken into account when determining the subsidy</p> <p>1. The volume of subsidy for a planned period is determined on the basis of standards of budgetary provision and correction indicators of standards of budgetary provision.</p> <p>2. Standards of budgetary provision for local budgets are determined on the basis of the amount of inhabitants or consumers of products (jobs, services) provided by the state, the standards and clarified with the help of correction indicators that take into account the difference in costs of products (jobs, services) provided by the state, depending on quantity of inhabitants and costumers of state products (jobs, services), social, economic, demographical, climate, environmental and other features of administrative and territorial units as soon as they become determined.</p> <p>3. The methods of calculating the subsidies, standards of budgetary provision, correction indicators of standards of budgetary provision shall be approved by the Ministry of Finances.</p>	<p>The principle of normative planning itself is in fact a variant of target financing of concrete projects. The Budget Code clearly ignores the existence of local interests using the notions “consumers of products (jobs, services) provided by the state”. In this way even the own resources of the local authorities already at the planning stage have the target component.</p> <p>Even more it concerns the subsidies given from the higher budgets to the local level. The Budget Code directly links the amount of these subsidies with standards of budget sufficiency calculated by the central government what makes these subsidies entirely targeted.</p> <p>This approach fundamentally diverges with the Charter provisions.</p>	<p>Article 9 – Financial resources of local authorities</p> <p>7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.</p>
		<p>Article 9 – Financial resources of local authorities</p>
	<p>The Budget Code does not contain any provisions regarding the necessity of consultations with the local authorities concerning the issues of redistribution of the resources given to them.</p>	<p>6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.</p>

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