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COUNCIL OF EUROPE APPRAISAL REPORT

Draft Organic Law of Georgia Local Self-Government Code

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GENERAL REMARKS

In the framework of co-operation activities between the Council of Europe and the Georgian authorities, the Council of Europe has been requested to provide analysis on the draft Organic Law of Georgia, Local Self-Government Code. The draft law has been transmitted to the Secretariat by the Permanent Representation of Georgia to the Council of Europe and has been subject to detailed analysis.

A CoE draft opinion prepared by Council of Europe Secretariat, in close co-operation with five Council of Europe experts who are distinguished specialists in the field of public administration and local self-government reform, had been established and submitted to Georgian authorities on 13 December 2013.

A revised version of the Draft Code, which contained substantial changes following the adoption of the draft in a first reading by the Georgian Parliament, had been submitted to CoE Secretariat on 16 December 13. A delegation headed by Georgian Deputy Minister for Regional Development and Infrastructure Mr Tengiz Shergelashvili had meetings with CoE Secretariat and Robert Hertzog CoE expert, on 16-17 December 2013 in Strasbourg to discuss the draft Code and the CoE's appraisal of its provisions.

The current document represents Council of Europe's assessment of the most recent version of the draft Code (submitted on 16 December 2013), the compatibility of its provisions with established European norms and standards in the field, taking into account the changes that the text has undergone as well as discussions held in Strasbourg.

ANALYSIS OF THE DRAFT LAW

Section I: Local Self-Government

General Comments and relevant European standards

Local self-government organization, functioning and financing has been a constant preoccupation of Georgian authorities since Georgia became an independent sovereign State. Georgia has enacted several laws on this subject and at least three major documents defining a strategy of decentralization have been issued in the last ten years. The Council of Europe has readily assisted the Government during the accomplishment of this task in the past and welcomes the Georgian Government's continuing efforts for cooperation in this domain.

As "local freedoms", a fundamental component of the rule of law and of a democratic political system, were not recognized in the former Soviet system, Georgia had to adjust its national legislation to the European Charter of Local Self-Government (hereinafter referred to as 'the Charter'), which it signed on 29/5/2002 and ratified on 8/12/2004, and which is part of the Georgian legal system since 1/4/2005. In addition, the general architecture of territorial organization appeared to be inadequate because of its fragmentation in a great number of small and weak entities.

Previous discussions with the Georgian government, since 2008, had demonstrated that many aspects of the legislation on local self-government deserve to be revised. Many "technical" provisions, on the financing of local self-government or the definition of the competences, etc., need to be adjusted periodically and comparative studies show that the improvement of local self-government systems is a long lasting challenge. Therefore the Council of Europe highly appreciates a new step forward. At the meantime, academic studies as well as empirical observation show that too frequent modifications of substantial aspects the local self-government (size and boundaries, competences, procedures of election, etc.), do not automatically help to improve its efficiency in delivering services to the population and in fulfilling other missions of general interest.

Therefore, any new modification must be based on a sound analysis of the defects of the existing system and on explicit description of the objectives of the reform as well as on a detailed "cost-benefit" assessment. On political level, it is also known by experience that local self-government reforms have a greater chance to be in force for a long time when they have been negotiated between the different groups concerned (political parties, representatives of local self-government units, associations): the larger the consensus, the more successful the reform. Such reforms should be subject to the decisions of a political majority but nonetheless be treated as "bi-partisan" issue. Currently the fundamental goal is to stabilize the structures and political rules and missions of local self-government units.

The presentation of an Explanatory Note by the Government of Georgia demonstrates that it is fully conscious of this.

The creation of a draft Code on Local Self-government that consolidates the legislation in a unique organic law, as required by the Constitution, is welcomed by the Council of Europe. But the objectives defined are more ambitious and aim at a thorough modification of the local self-government system in Georgia. The Note is very critical with the present situation of local self-government in Georgia. It is not difficult to understand this, considering the conditions in which an amalgamation has been conducted by transforming more than 900 municipalities into about 70, and by choosing the rayon as the new perimeter of the communes, which is a function (and a territory) for which it was not initially designed. This was not an optimal choice, but the experience of other countries shows that when territorial boundaries are subject to modification, decision making can become very cumbersome and progress can be blocked. So, at the time Georgia was praised for its capacity to overcome these obstacles in implementing quickly a major territorial reform.

In the past the Council of Europe had already suggested revising the status of the newly created "rayon communes" in order to put in place more appropriate political relations between the "centre" and the "outer parts" of the large commune as well as to guarantee equal public service on whole territory of the commune. Therefore, quite logically, the Council of Europe has no reasons to put forward objections against a project which aims at reshaping the "map" of the municipalities and which can be considered as an opportunity to strengthen democracy and efficiency at municipal level.

The Explanatory Note says little about the content of the next model of territorial organisation. This information cannot be found in the Section 1 of the draft Code, which omits to give precise perspectives on the desired size of municipalities and does not describe the procedures for achieving such an ambitious objective: creating the 3rd model of local self-government in Georgia. This is a radical transformation which is not simply about drawing the new map of the municipalities. The challenge goes beyond the "Territorial optimization of municipalities" as mentioned in Article 179. These are not merely technical issues which can be defined in transitional articles. We are dealing with a thorough and a substantial improvement of the definition of the basic units of local self-government.

A declared intention of the drafters is to increase the number of self-governing cities and to create an optimal territorial structure of the state in order to better adjust it with both existing local traditions and needs for further development. Within the specific context of Georgia, a country in full transition which undertakes ambitious institutional changes and legal reforms, the success of such endeavours depends both on the degree of acceptance and even adherence to their scope by the majority of the concerned population and on the practical and effective implementation of envisaged changes. Therefore, of utmost importance is not only the compliance of Georgian legislation with European rules and best practices, but also the involvement and participation of the population and different political forces in the mentioned transition and the potential of new standards and regulations being fully and effectively implemented.

This new concept of "municipality" must be visible and clearly described in the first articles of the Code. This will shed light on the geographical classifications of "inhabited localities", settlements, towns, etc. that are mentioned in Section 1 without any clear function and utility. Therefore it is strongly recommended that Article 179 of Section VII becomes part of Section 1.

The provisions of this Article should also be more precise on the definition of the characteristics and the size of new municipalities. The draft Code should not leave it entirely to the State Commission for Regional Development (established by the resolution N 297 of September 28, 2010 of the Government of Georgia) to define the criteria of their establishment. It is the duty of the law and the responsibility of the Parliament to draw the frame and fix the basic directives. This is a fundamental requirement for any local self-government reform, in line with the principles of the European Charter. Reference is made to Recommendation Rec. (2004)12 of the Committee of Ministers to member states on the processes of reform of boundaries and/or structure of local and regional authorities[1].

[1] https://wcd.coe.int/ViewDoc.jsp?id=784351

Chapter I: General Provisions

Article 1 defines the scope of the Code.

Comment: It is recommended to redraft this Article as follows, since a Code contains only legal provisions concerning different subjects.

"This code defines the legal ~~and financial-economic~~ basis of implementation of local self-government, powers of local self-government bodies, rules of their formation and operation, finances, relations with citizens, state government bodies, legal entities of public and private law, as well as the rules of implementation of the state supervision and direct state governance of the local self-government bodies."

Article 2 defines the concept of local self-government

Comment: it is suggested to delete the following from paragraph 2 of this Article since the definition of a "concept" can only be the legal entity with its substantial characteristics; the different forms are defined in the next article. Anyhow, "inhabited locality" is not sufficient to define a town.

"2. The local self-government entity is a municipality~~. The municipality represents an inhabited locality (self-governing town) or an association of inhabited localities (self-governing community),~~ which has its administrative boundaries, representative and executive authorities of the elected local self-government (hereinafter-municipal authorities), has its own property, budget, incomes and is an independent legal entity of public law."

Article 3. Self-governing town and self-governing community

Comment: The following wording of Article 3 (1) is recommended.

1. to be deleted
2. Self-Governing City is a settlement of urban category, which will be granted a status of a municipality ~~of a Self-Governing City~~ under the present Code.
3. A self-governing community is an association of several inhabited localities with historically formed and/or uniform socio-economic and natural-geographic characteristics, which has been given the status of ~~self-governing community~~ a municipality."

Paragraph 1 is redundant; it is already mentioned in Article 2 that "The local self-government is exercised in municipalities" and it should not give the impression that self-governing cities and self-governing communities are other forms or categories of self-government. In addition, Tbilisi as a unique form of self-governing structure, should also be mentioned. The terms "town" and "self-governing community" have no real legal signification. It is just a factual explanation saying that municipalities can be urban or rural.

Article 4 defines the primary territorial unit of population's settlement.

Comment: From the legal point of view, the need and scope of this article are questionable. It is a description of physical or geographical realities in a rather complicated wording and with long and debatable definitions, without any legal consequences. One does not see why it is important to have such provisions in an organic law. There will be no legal consequence when one applies the denomination of "settlement" instead of "town". For the clarity of the law and a good understanding of the system by everybody, the law should not create artificial administrative categories without legal content.

It is however understood that this provision serves mostly practical reasons, to make clear that the new municipalities will not be all of different types. But this is the case everywhere: municipalities do not have the same size, or the same sociological and economic characters, nor the same cultural or political functions. Yet, if the Parliament of Georgia considers that it is important to say that, there is no objection as long as there is no misunderstanding about the fact that these are not specific categories of local self-government units.

"Inhabited locality" is an ambiguous category, with 3 subdivisions. It has no legal personality and no political representation. It is not a local self-government unit and is not in the scope of the Charter; this could be explicitly mentioned in paragraph 1: "The primary territorial unit of the settlement of population, which has not the status of a local self-government unit, is a settlement, which has a name, administrative boundaries, an area, has the registered population and is registered in the united registry of settlements. The settlement categories are..."

Article 5. Legal basis for implementing local self-government

"1. The Constitution of Georgia, European Charter on "Local Self-Government", international treaties and agreements, this Code, other legislative and statutory acts of Georgia make the Legal basis for implementing the local self-government."

Comment: Paragraph 1 is redundant. A law does not have to mention that the Constitution or international treaties apply to a certain object. This is not happening as a result of the law. So this paragraph only provides information, without normative content and effect. Thus it should not be in a law, following the general doctrine of Constitutional Courts. Nearly the same provision is repeated in Article 6 (1). As a minimum one mention would be sufficient and appear at Article 6.

Article 7. Guarantees for exercising municipal powers

Comment: In order to provide exercising of the municipal powers, the state agencies are required to establish the appropriate legal, financial-economic and organizational conditions.

Paragraph 2 contains a statement with the gist of which everyone can agree.
But legally speaking, it cannot be admitted that state agencies define "the appropriate legal, financial-economic and organizational conditions" for municipalities. Not only these are very difficult to define but they should be established by law, not by an (administrative?) act of state agencies. This is not a legal obligation; it is rather a kind of evident political recommendation: it is a natural obligation of the state to make local self-government work efficiently. Of course, state agencies will have to prepare draft legislation (on legal, financial, organisational aspects) for the Parliament to enact. But saying it will not be binding for the ministries to do that or for the parliament to accept. So, this kind of a statement should not appear in an organic law.

Article 8. Analysis of local self-government's functioning

Comment: Paragraph 1 does not provide a good, clear and precise definition of the competences of this Minister in the domain of local self-government. "Analysis" is imprecise and should be replaced by "supervision" or "control". The second sentence is difficult to understand. Does it mean that this Ministry is considered to be the representative and "spokesperson" of municipalities inside the State apparatus? What is the precise legal force of this sentence?

This paragraph should possibly be redrafted as follows: "The minister of RDI is in charge of supervising the functioning of local self-government entities; he or she performs permanent audit of their organisational and functioning provisions; makes proposals to improve the efficiency of these rules, etc."

Chapter II: Administrative - territorial Organization of Local Government

General comment: This Chapter shall include a general article defining the municipalities, especially in comparison with what exists presently and in relation with the entities defined above (inhabited locality). It should clarify whether a municipality is composed of villages, settlements and towns or only by one category of them? How "inhabited localities" are to be included in a specific municipality? Before dividing or merging municipalities they must be defined and established. A possible solution would be to move Article 179 of this law to this Chapter (in Introduction), because it will radically change the concept of territorial organization.

Article 10 deals with the Establishment, abolition of a municipality and determination (change) of the administrative centre.

Comment: This article is central to the new map of municipalities, because it describes the procedure by which the new municipalities will be created after the adoption of the law. Most of them will be the result of dividing the present "rayon municipalities" into smaller ones.

Chapter III: Powers of municipality

Article 14. Types of municipal powers

It is suggested to redraft paragraph 3 of this Article as follows: "The power, delegated to the municipality, is the State power, transferred to it under the provision of appropriate material and financial resources by the state/Autonomous Republic's authorities on the law or contract basis, according to the procedure established by law."

Article 15. Own powers of municipality

Comment: Own powers and exclusive powers are two different concepts; therefore exclusive powers should also be defined. One should question if "exclusive" power in general is a useful legal concept. For most "own powers", there need to be still State decisions, for example the adoption of the different programming documents by the Governor. The Constitution mentions the same word, which is really important when there are several tiers of local self-government, in order to avoid that several local governments have competence in the same matter and are in competition. The Charter uses the word "full", meaning that a function or task should be fully given to a local government and not split with the State or other local authorities.

It is recommended to add a new paragraph j) in Article 15 paragraph 2 as follows: "j) Control of the external trade, exhibitions, markets and fairs. "

This could be a delegated power, the municipality acting in the name of the State, because it is also of national interest to have given policies in that domain. So the ministries would be entitled to give instructions on it.

Paragraph 3 of Article 15 could be redrafted as follows: "3. The municipality is entitled to handle on its own initiative any issues of municipal interest that, according to the Legislation of Georgia, do not fall within the scope of authority of another governmental body and are not prohibited by law."

Article 16. Procedure and terms for powers' delegation

Comment: The wording of this Article is complicated and not absolutely rigorous (most probably due to translation). But overall it seems in compliance with established norms. It must be clear that delegated powers remain state powers, exercised by local government authorities in the name of state and under general control of the concerned ministry.

Article 19. Municipalities' right to establish non-productive (non-profit) legal entities and joint services and carry out cross-border cooperation.

Comment: Paragraphs 1 and 2 concern the creation of national or regional associations of municipalities which shall represent the interest of local self-government before national and international organizations. It is not only for coordination but also for exchange of best practices, to organize training sessions for mayors and councillors, publish a newsletter, maintain, a webpage , etc. It is appreciated by the Council of Europe, and by the Congress of Local and Regional authorities, that this kind of association is expressively prescribed by the law. Considering their national and European interests, it would be pertinent to have a separate article in the law dedicated them.

One can suggest following wording for this article:

"1. The municipalities have the right to establish national or regional non-profit (non-commercial) legal entities and join them as the members.

2. These non-profit (non-commercial) legal entities can organise activities of common interest for Georgian municipalities; they can represent municipalities on the national level and cooperate with the state authorities ; they can be invited to participate in the preliminary consultations on draft laws that are related to the local self-government; they can cooperate with international unions of self-governing units and have relations with similar foreign associations or international organisations with competence in the domain of local self-government."

Paragraph 3 is dealing with inter-municipal cooperation in a very short and expeditious manner. This important subject deserves a special article in the Code because it is of much wider importance than municipal associations or cross border cooperation together with which it is mentioned. Whatever the size of the new municipalities, they will need cooperation in particular matters (public utilities, promotion of tourism, economic development, etc.). It is of highest importance that the new municipalities have a visible and legally secure tool for that.

"In order to exercise effectively the competences established by this Code, and to provide better services to the population, the Municipalities have the right to form inter-municipal cooperation bodies (*structures or functional units*); on the basis of an agreement two or several municipalities can create one or several joint cooperation bodies (structures or functional units), to which they transfer certain uniform functions existing within the scope of their authority, with the relevant material and financial provisions. Regulations and conditions of the joint service management, financing and rules of control by the given municipalities shall be determined by the agreement concluded between the municipalities. These intermunicipal cooperation bodies (*structures or functional units*) shall respect the legal provisions established in their domain and the state control applied on municipalities will also be applied on these structures. The government of Georgia can issue regulations and models in order to facilitate the creation of such intermunicipal cooperation bodies (*structures or functional units*)."

And finally, it is probably the best solution to have also a separate article on trans-border cooperation which is an activity that is similar to none of the others.

"A Municipality is authorized to cooperate on matters of municipal interest with local self-government authorities of other countries, in the framework of the "European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities"[2] and in accordance with the legislation of Georgia."

Section II: Municipal Bodies

General comments and relevant European standards

The following European legal standards have been considered relevant for the appraisal of this Section of the draft Code:

European Charter of Local Self-Government, particularly articles 3 paragraphs 2; 4; 5; 6; 7

- Article 3 (2) provides for the need that self-government be exercised by democratically constituted authorities, which normally entails a representative body, with or without executive bodies subordinated to the first ones, while this should not be considered in any way as preventing the possibility of direct democracy being expressed wherever and whenever possible (mentioned in a statute or otherwise).
- Article 4 lays down the basic principles on which own powers of and delegated power to local authorities should be based upon, thus acknowledging that an exhaustive enumeration of all powers and responsibilities of local authorities is not always possible or even necessary and that a vertical division of powers (*répartition des compétences*) between central (national) and local authorities is of utmost importance for local self-government.
- Article 5 pertains to the situation where a change in the boundaries of local entities (division or amalgamation of self-governing entities) can be decided only after the consultation of concerned local communities, via referendum or other forms of consultation.
- Article 6 provides for the autonomy of local authorities in determining the administrative structures they deem most appropriate in order to satisfy the local needs as well as for their autonomy with regard to the status, remuneration, training and career prospects of the local employees.
- Article 7 aims at ensuring that local representatives and other categories of locally employed staff may not be prevented from carrying out their functions either by material considerations or by other types of pressure that could be exerted upon their career prospects, while at the same time requiring that incompatibilities with local elective offices should be provided by law.

Council of Europe Reference Framework for Regional Democracy particularly the provisions concerning the right to regional self-government and its definition, division of powers between the central, regional and local levels, the principle of subsidiarity, regional assemblies and their respective executive bodies.

Mention has to be made here that Georgia has ratified the Charter with reservations on Article 4 paragraph 6, Article 5, Article 6 paragraph 2, Article 9 paragraph 6, and Article 10 paragraphs 2 and 3.

[2] http://conventions.coe.int/Treaty/en/Treaties/Html/106.htm

Article 1 of the Georgian Constitution declares Georgia to be a unified and indivisible state, including the Autonomous Soviet Socialist Republic of Abkhazia and the Former Autonomous Region of South Ossetia, whose status is defined through a Law on the occupied territories. Also, local self-government in the Autonomous Republic of Adjara/Adzara is governed by a constitutional law on the "Approval of the Constitution of Adjara/Adzara". According to Article 2 of the Georgian Constitution, the territorial structure of Georgia shall be determined by a constitutional law after the complete restoration of the jurisdiction of Georgia over the whole territory of the country. Articles 2, 3 and 4, as well as the newly appended Chapter VII of the Georgian Constitution set forth basic principles of local self-government compliant with the European standards above described. The draft Code submitted for evaluation is attempting to implement these provisions while accomplishing a gradual reform of local self-government.

Unlike previous legislative amendments in the area of local self-government, scattered in a multitude of statutes that go back mainly to the period between 2000 – 2006 and which, generally, increased the role of representative councils of municipalities and reduced the scope of executive bodies, the current legislative reform is presented as a codification of main provisions pertaining to local self-government and intends to better balance powers of Sakrebulo and Gamgebeli/Mayors, while at the same time accommodating mechanisms of accountability, particularly accountability of the executive bodies in front of representative ones and in front of the population.

The drafters seem to be aware of the potential tensions and even crisis that such new mechanisms might trigger since they mention them in the explanatory note and underline the need for solutions to overcome them; however, at times, a closer analysis of some of the legal norms may point in a different direction (e.g. vote of defiance and dismissal of Gamgebeli/Mayors, some legislative procedures at the level of municipalities, some budgetary procedures at the level of the capital city).

Overall, **the Sections II and III** are well tuned with the European standards here considered; some provisions which deserve further consideration have been duly underlined in the following pages. Careful consideration has been given whenever possible to the future implementation of legal provisions as to alert upon probable or even potential risks and threats.

Chapter IV: Representative Body of the Municipality

Articles 20 – 29 regulate the election, internal organisation, procedures and powers of the municipal council (Sakrebulo) as the representative body of local communities. Articles 30 – 32 pertain to the chair of the Sakrebulo, while Article 34 refers to the chair of internal commissions of Sakrebulo and Article 35 refers to the chair of factions of Sakrebulo. Articles 36 – 44 provide rules for the legal status of members of the municipal council, including conflict of interest.

While most of these provisions are in line with European standards and represent extremely detailed descriptions of expected behaviour of various actors they address, there are still a number of questions that might need further consideration.

Comment: **Article 20** defines the Sakrebulo as the "representative body of the municipality", to be composed of 15 to 30 members elected for a term of 4 years by citizens who have to be "registered in the territory of the municipality" (paragraph 2) in order to be able to participate in the democratic process; furthermore, paragraph 3 of the same article provides that the number of Sakrebulo members shall be determined in accordance with "the number of voters registered in the municipal area". This may be an issue related to translation but it does deserve clarification. If registration of voters refers to the simple declaration of residence within the concerned municipality to get the status of "elector" the right to vote in local elections does not appear to be limited. This is the exact interpretation as it was explained by Georgian officials during meetings in Strasbourg.

Article 21 provides a non-exhaustive (see Article 21 (2)) enumeration of own powers of the Sakrebulo. Such a provision should be coordinated with Article 15 of this draft Code, but more importantly with Article 51, providing the powers of the Gamgebeli of municipalities / Mayors of self-governing cities (hereafter referred to as Gamgebeli/Mayors).

Comment: While Sakrebulo is said to exercise "other powers" and Gamgebeli/Mayors are said to exercise powers in "other fields of executive activities" the distinction does not appear to be very clear. Overlapping between the powers of Sakrebulo (legislative) and Gamgebeli/Mayors (executive) seem to exist in what the Code defines as "financial-budgetary field" (e.g. introduction and cancellation of local taxes and fees) as well as "management and disposal of municipal property"; the same powers seem to be grouped under different labels (e.g. the municipal procurement plan is in the field of management of municipal property with Sakrebulo and in the field of finance and budgeting with Gamgebeli); residual powers do not seem to have a clear fate (paragraph 2 of Article 21 related to paragraph 1 letters b.b)-b.d) of Article 51). While such legislative ambiguities *per se* do not infringe upon a specific European standard they may raise serious difficulties upon the implementation and throw doubts on the local authority actually entitled to take action thus paving the way for institutional misunderstandings.

Article 23 (3) sets forth a procedure for gathering Sakrebulo in extraordinary sessions (in case the chair does not convene it within one week) which leaves room for discretion (when will it convene? why and how can the Sakrebulo secretary - different from the chief of the Sakrebulo office as provided by Article 28 - preside over an extraordinary session?). This draft Code is very detailed with regard to each local authority but it fails to provide for the creation, powers and responsibilities of the secretary of Sakrebulo.

Comment: Provisions such as the one Article 23 (6) deserve praise and it would have been even clearer that, as a general rule, voting procedures within the Sakrebulo are public if the phrase was drafted as follows: "Except for voting on issues relating to a person's election and a vote of non-confidence, when ballot shall be secret, all other voting procedures in the Sakrebulo are public".

The internal organisation and functioning of Sakrebulo seems to follow the pattern established rather for national parliaments. This approach might explain the provision of the possibility for at least three members to create factions within Sakrebulo (Article 27), both on a party and non-party basis (save for national, territorial or religious and professional criteria). However, the functional utility for the local self-government of such factions is not made clear within this draft Code, the more so since neither the chair of such factions nor the factions themselves do not seem to bear (any ?) attributions within the Sakrebulo. This might become an issue in the effective functioning of the councils if it facilitates political fragmentation. But this is a political decision of the Georgian Parliament.

The chair of the Sakrebulo is to be elected (article 30) and dismissed (Article 31) by the municipal council. His/her powers (Article 32) refer mainly to the internal organisation and functioning of the Sakrebulo. However, its representative function may collide with the representative function of the Gamgebeli/Mayor. Indeed, **Article 32 (1) f)** provides that the chair represents the municipal council within the powers conferred upon him/her by the draft Code, while **Article 51 (1) (e.a)** provides that Gamgebeli "represents a self-government unit in relations with the third parties, signs the agreement concluded on behalf of the self-government unit, executes the other representative functions".

One can debate on the pertinence of saying that the chair of Sakrebulo "represents" the assembly; he/she chairs the meetings and implements some decisions. And the representative of the Municipality is the Mayor alone. It is important to avoid risks of confusion and competition between the two officials who must cooperate to make municipalities function efficiently.

Comment: This could also become an issue during the implementation process.

Members of the Sakrebulo have a representative mandate of 4 years, which does not allow voters to recall them but which does not prevent them from being in close contact with citizens of the municipality. Since the mandate of regular members of Sakrebulo is to be exercised freely and not to be remunerated, **Article 37 (9)** provides for strong and commendable guarantees for their status. Also, reimbursement of expenses incurred by regular members of Sakrebulo (**Article 38 (3 - 4)**) is another important guarantee, fully in line with requirements of Article 7 of the Charter. Sakrebulo chairs and deputy chairs, as well as chairs of commissions are remunerated in accordance with rules provided by the central government (**Article 38(1)**).

Comment: Compared with the previous drafting of the relevant provisions (which used to involve the President of the Georgia) this legislative solution seems better in line with European practices. The same is valid for **Article 50 (1)** pertaining to the office of Gamgebeli/Mayor and for **Article 70** on members of the district council.

Chapter V: Executive Body of the Municipality

Articles 45 and 47 - 48 as well as 51 - 55 refer to the mayor (Gamgebeli), while Article 46 refers to the city hall (Gamgeoba). Articles 49 – 50 and 56 pertain to the legal status of other officials of the Gamgeoba. Article 57 deals with a specific civil servant of local authorities, namely the manager of the Gamgeoba. Finally, Articles 58-59 provide for the legal regime of legal acts enacted by Sakrebulo and its officials although it is difficult to understand why legal acts of Sakrebulo (a legislative local authority) have been included in the chapter relevant for the executive local authorities.

Comment: From the onset it should be pointed out that Article 3 of the Charter requires that the right of local self-government be exercised by freely elected councils or assemblies and that executive organs which should be responsible to them are only optional. However, European practice displays a consistent pattern of executive organs, a big majority of them being elected either directly by the citizens or by the councils or assemblies. On the other hand, two Recommendations of the Congress of Local and Regional Authorities based upon results gathered from monitoring missions organised in Georgia at a distance of eight to nine years have strongly upheld the position that direct election of Mayors of self-governing cities and of Gamgebeli of other municipalities - following the model established for the Mayor of Tbilisi in 2010 - would be an appropriate solution for the particular situation of Georgia. Therefore, the solution envisaged by the draft Code to provide for directly elected Gamgebeli/Mayors has to be greeted. However, the legal regime of the Gamgebeli/Mayors is not always clear; it may lead to the conclusion that the pattern for the configuration of the institution of Gamgebeli/Mayor in the system of Georgian local authorities may have drawn from the relations existing between President and Parliament in a semi-presidential or presidential political system.

This may be a solution suited for the specific situation of Georgia, a country in full process of changing its legal framework and political practices in a relatively short period of time; nevertheless successful implementation could be hampered by uncertain or equivocal or, at times, even hazardous legal provisions. While most provisions in chapter V are also in line with European standards, there are still some which could cause problems upon implementation; the most obvious risks will be raised in the following lines.

Article 45 describes the Gamgebeli/Mayor as the executive body of the municipality/self-governing city so it is difficult to understand how it should be "the highest official of the municipality" since the right of local self-government belongs with the Sakrebulo as the representative and legislative body of the municipality. On the other hand, making Gamgebeli/Mayor responsible both in front of the Sakrebulo and of the population confronts the institutions with serious accountability. In addition, requirements for the right to be elected as Gamgebeli (Article 47 provides for 25 years of age and at least 5 years of living in Georgia) are more demanding than those imposed for the election of members of Sakrebulo (Article 37 (2) provides for 21 years of age and only 2 years of living in Georgia). Moreover, Gamgebeli/Mayor can be impeached (Article 48) upon initiative stemming from either the absolute majority of members of Sakrebulo or at least 20% of registered municipality voters (see comments pertaining to art. 20) but no grounds are provided by the law for such a decisive action to be taken by the council or the voters.

Comment: This leaves the impression that candidates for the position of Gamgebeli/Mayors should place themselves at a high risk when undertaking this office; in order to compensate for this, such an office has been granted significant powers. While direct election of executive bodies of local authorities in the European practice does place emphasis on such officials, it has never led to the configuration of a fully semi-presidential or presidential office at local level and even less so to the situation where a mayor would be impeached purely on political (opportunity) grounds, a possibility that seems to exist in the Georgian system of local self-government.

Article 48 has been widely discussed with Georgian representatives at the Strasbourg meeting on December 17th. The Georgian representatives explained that a more exact translation would be a "vote of non-confidence" rather than "impeachment". This article is an important component of the political consensus in the Parliament between political forces who prefer an election of the Gamgebeli by the assembly and the ones who wish to see direct election by the citizens. In order to resolve a political crisis when there happens to be a confrontation between the mayor and the council, this procedure of resolution was considered as acceptable by a majority of members of the Parliament.

The reasons behind this procedure are clear enough, although this procedure seems somehow problematic. The mayor and the assembly, being directly elected by the citizens, have both a solid legitimacy in a system which looks to be, when one takes also into account other provisions of the law, a kind of "presidential system". Yet, this kind of vote of non-confidence is typically in the logic of a "parliamentary system". In the presidential one, only impeachment for acts that may be considered as criminal or violation of major legal provisions (human rights, public liberties…) should allow the assembly to dismiss the mayor. Normally, a deep political disagreement should result in the non-adoption of the municipal budget by rejection or refusal of vote. This needs simple majority and the consequence will be new elections of both the mayor and the assembly, which seems the logical and democratic solution.

The adopted procedure may still be considered as acceptable insofar as it concerns a local self-government institution, not a national one ruled by a constitution. The figures in paragraph 1 and 2 are rather high (full majority of assembly or 20% of electors for launching the procedure and 2/3 of assembly to decide a dismissal of the mayor). So, in fact, the procedure should not be started if a majority of 2/3 is not ensured in the assembly since the beginning. The time limits fixed in paragraph 3 ad 4 give also satisfying guarantees against a misuse of this procedure. Therefore, we can assume that it will be used very scarcely, probably against a mayor who has been elected mostly relying on personnel charisma without the support of any political party represented in the assembly. Of course, one cannot exclude that some activists will not use this for political harassment; but these are risks that exist in all democratic systems.

Article 51 enumerates what appears to be a non-exhaustive list of powers of Gamgebeli/Mayors, grouped within five categories: organisation of Gamgeoba; relations with the Sakrebulo; municipal finance and budget; management of municipal property; other executive activities.

Comment: Some comments upon this article have already been provided with regard to potential correlations that can be established with Article 21. Additional ones will be made here. According to Article 4 of the Charter, public responsibilities shall be generally exercised, in preference, by those authorities who are closest to the citizen.

A consistent European practise points to a pattern where executive bodies have the initiative of legal acts and representative bodies at local level have the decision-making power, particularly in a set-up where both the executive and the legislative bodies are directly elected by the citizens. Therefore the correlation between articles 14, 15 and 16 of this draft Code and Article 51 cannot leave aside Article 21, particularly when direct mention is made with regard to own and delegated powers of local authorities (Article 51 paragraph 1 (b.b)). Some of the powers under letter d Article 51 (1) (particularly letters **d.d) – d.g)**) appear to be exceptions from the general legal regime of management of municipal property which, in practise, may lead to arbitrary decisions, despite the fact that such decisions are to be made only with the consent of Sakrebulo (which is not legally framed either).

Article 51 (2) allows Gamgebeli/Mayors to appoint a representative in settlements which do not enjoy self-government and are placed under the jurisdiction of the municipality/self-governing city; such representatives are to be distinguished from those that Gamgebeli/Mayors "are authorised to have in the Sakrebulo" as permanent representatives (**Article 51 (1) -b.c)**). Such permanent representatives do not seem to be regulated by this draft Code or subsequent bylaws, their role and function being thus unclear.

It would probably be more efficient to have a provision saying that the Gamgebeli ensures that municipal employees have periodic presence in each settlement in order to allow the population to fulfil administrative current procedures without having to go to "central" city hall.

Rather like in presidential political regimes, the Gamgebeli/Mayors can appoint first deputies/vice-mayors and other deputies (**Article 54**) entirely accountable to them. First deputies/vice-mayors can substitute Gamgebeli/Mayors only during their temporary absence (paragraph 4), while in the event of suspension from office or terminating of the mandate of Gamgebeli/Mayors it is the chair of Sakrebulo that should replace him/her (**Article 53 (3)**). It is difficult to understand why a measure such as the suspension from office (for, say, temporary disability or candidacy in presidential elections) or the termination before the term (for, say, death or resignation) of the mandate of Gamgebeli/Mayors would bear consequences on the first deputy/vice-mayor just as it may duly happen in case the first deputy/mayor is dismissed by the very authority which appointed him/her (**Article 56**).

Articles 58 and 59 provide for procedures to adopt normative acts by the municipal authorities and to appeal them.

Comment: The decision-making process described in **Article 58**, used in order to arrive to a normative act with the consent of both Sakrebulo and Gamgebeli/Mayors, seems cumbersome and hazardous. It requires a close and difficult to achieve cooperation between the legislative and the executive bodies, both of them with important stakes in the procedure; it has to be accomplished within short delays; in practice it may lead to different results that suit either one party or the other, without providing the necessary ground for a compromise to be reached even in case of strong and persistent disagreements. For a smooth implementation it might be wise to search for a simplified legislative procedure, in which the executive may even have the monopoly of the legislative initiative while the decision ultimately resides with the legislative and representative body of the local self-government.

As for the appeal procedure provided by **Article 59**, it represents a mere reference to relevant Georgian legislation, save for the appeal of administrative acts issued by officials (paragraph 2) of municipalities/cities which has first to be addressed to the Gamgebeli/Mayor and only afterwards can be addressed to courts. This may be an issue arising from the translation, but in case that the term "officials of municipalities/cities" refers only to the staff provided for by Article 49 the appeal procedure might be appropriate, while if the term "officials of municipalities/cities" also includes the staff provided for by Articles 28, 29 or other "officials" as enumerated by Article 58 (3) it raises a clear question of potential (inexistent) subordination relations between them and the Gamgebeli/Mayor here acting as supervisor.

Once again the rather strange positioning of these two articles pertaining to the legal acts that embody the decision-making process of all local authorities in the chapter dedicated to the executive bodies of the local self-government may lead to conceptual confusions and practical problems.

Finally, a word on the way in which the draft Code is dealing with the requirement of Article 6 in the Charter, namely with the autonomy of local authorities in determining the administrative structures they deem most appropriate in order to satisfy the local needs as well as with their autonomy with regard to the status, remuneration, training and career prospects of the local employees. **Articles 21, 28, 32, 50, 51, 57, 78** provide for a large marge of manoeuvre (anywhere between discretionary and arbitrary) of local authorities in appointing local staff and defining their job descriptions, career paths and remuneration. Article 82 is among the rare ones expressly mentioning the Law on civil servants as a basis for the competitive selection of locally employed civil servants. The Council of Europe gives high importance to the transparent and professional recruitment procedures for local self-government employees: it is a condition of democratic and efficient management, which are requirements of the Charter.

However, it is not clear whether the recruitment of high-quality staff on the basis of merit and competence is favoured at local level, or if training opportunities are properly offered and taken into account, but this may not be the object of this piece of legislation and might be stated elsewhere (law on civil servants). Greater coherence and clarity in draft Code with regard to a topic which is subject to Article 6 of the Charter would enhance compliance with European standards and chances for better implementation, a part from potentially improving staffing of local public authorities.

Section III: – Tbilisi – the Capital City of Georgia

Chapter VI: Status of the Capital City

As provided by Article 10 of the Georgian Constitution, the capital city of Georgia is Tbilisi, a self-governing city that enjoys a special status as per Recommendation 219 (2007) on the status of capital cities. Tbilisi constitutes a single self-governing city, provided with its own Sakrebulo (representative and legislative body) and city hall (an executive body made up of Tbilisi Mayor, Tbilisi government and Gamgeobas of districts). It is divided into districts which are administrative units that do not enjoy the status of self-government but are provided with district councils and Gamgeoba. According to Article 62, the Sakrebulo of Tbilisi is entitled to transfer powers to district councils as an exception to Article 21 (3).

The main criteria (set forth in Article 64) for the creation of administrative units within Tbilisi are consistent with European standards. Rules previously examined and pertaining to bodies of local self-government in Georgia are valid for Tbilisi as well; however, Tbilisi also presents some specificities with regard to (i) own powers (wider than other self-governing cities), (ii) administrative organisation (intermediary between local self-government and region), (iii) executive body (more complex).

The Analysis of this Section has been based on relevant articles of the Charter as well as the Recommendation 219 (2007) on the status of capital cities of the Congress of Local and Regional Authorities, particularly the requirement that capital cities be recognised as a municipality with special status and a pre-eminent role and that they must have the right to self-government and exercise public responsibilities through democratically constituted authorities; the particular emphasis put on legal and material guarantees of the autonomy of the new capital city government, on a clear and transparent division of responsibilities between the municipal and district levels of local government in a capital city and on the proper cooperation between central and municipal governments; and the requirements that districts or other subdivisions of the capital city have sufficient financial resources to manage their own or delegated functions.

Given the special status of Tbilisi the evaluation of the relevant provisions of this draft Code has used as referential the Charter, the Reference Framework for Regional Democracy and the Recommendation 219 (2007) on the status of capital cities. Most provisions of this draft Code are in line with these European standards. Attention will be drawn only on those which deserve further attention particularly with a view to an effective implementation.

Chapter VII: Representative bodies of Tbilisi Self-Government and Tbilisi Administrative Units

Article 65 makes applicable the national electoral rules for the Sakrebulo of Tbilisi, a representative body made up of maximum 50 members. This may be another issue arising from translation, but here it is useful to draw attention on the specific requirement of the Recommendation on the status of capital cities pertaining to the management of the capital city that is not to be accomplished by centrally appointed authorities or local district authorities and on the recommendation to set-up a democratically elected municipality in the capital city.

Article 62 and 68 to 72 concerning district councils are abolished and this entity will no longer exist. The preliminary comment of the CoE on these articles underlined the complexity of the institutions and especially in the domain of budgeting procedures. So these remarks are no longer pertinent.

District municipalities exist in many laws for big cities or for capital cities (Yerevan, Paris, Casablanca...). The CoE would have had no objections against that formula which is rather in favour of local self-government autonomy. But we know also that it has its own complications and difficulties for division of competences, of human and financial resources, etc.

The crucial aspect is that the principle of subsidiarity is well implemented in this kind of city, either by "decentralization" and creation of a two tiers local self-government, or by "deconcentration" and an optimal distribution of the structures and services of a unified city administration. Great attention should be paid to this subject which is very important for the way citizens see the local system work. Therefore the law should include some provisions saying explicitly that the Tbilisi administration must be built on a logic of subsidiarity in which the "central" services are in charge of planning, coordination and matters of global interest and the day-to-day current administrative affairs as well as the management of proximity services (street cleaning, schools, kindergarten, water and waste, etc.) are in the hands of local services organised in the different districts or rayons.

So this is probably the reason and function of the "rayons" and it is a wise decision not to keep rayons and district councils in very complicated and probably inefficient structures.

Chapter VIII: Executive Body of Tbilisi Self-Government

Article 74 defines the Mayor of Tbilisi as "the highest official of Tbilisi and chief of the government" and requires that candidates are above 25 years of age and residents of Georgia for at least 10 years. Comments made at Article 45 on the same kind of wording are, *mutatis mutandis*, applicable here as well. The same goes for comments made at Article 48 on (purely political ?) impeachment. Likewise, interpretation caveats made at Article 65 with regard to the rules for national elections are equally transposable.

Article 76 provides what appears to be a limitative list of powers of the Government of Tbilisi, a collegial administrative body made up of Mayor, vice-mayor and other deputy mayors, heads of structural units save those meant to exercise control and supervision. This may be an issue arising from translation of mere drafting, but powers at letters n) and q) are identical, while powers at letters v) and w) seem to overlap up to identity.

Comment: While analysing the draft Code, it has been difficult to fully grasp the meaning of **Article 80**, nor the functions of and the procedure through which legal entities of public law are to be established (normative act of Sakrebulo in paragraph 1, specified by government in paragraph 2, defined by law and/or its statutes/resolution in paragraph 5). Furthermore, paragraphs 8-9 may have a specific meaning and purpose within the Georgian transition but this is not made clear to an external observer.

Chapter IX: Gamgeoba of Tbilisi Rayon – Territorial Body of Tbilisi City Hall

See observations concerning **Articles 62, 68-72.**

Section IV: Citizens Participation in Local Self-Governance and Public Councils of Settlements

General Comments

The relevant rules on Citizens Participation and Sub-Municipal Councils in the Charter are contained in the Preamble and in Articles 3, 4, and 13. Georgia has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

Chapter X: Citizen Participation in Local Self-Governance

The Chapter introduces principles and rules concerning transparency and publicity of decision making and decisions. Furthermore it introduces the voters' petitions submitting proposals for draft acts or annulment of Sakrebulo acts. It does not include provisions on local referenda or assemblies of citizens (Article 3 par. 2 of the Chapter).

Article 86 introduces some leading principles and guidelines for transparency of decision making and participation of citizens:

- It introduces a general obligation of municipal bodies, their services and officials to "create organizational and material-technical conditions" in order to ensure: a. meetings with citizens, b. citizens' participation into sessions of municipal bodies, c. transparency of decision making process.
- It introduces a legal obligation of municipal bodies to publish through local media "or the Resolutions of Sakrebulo" initiated draft decisions, procedures and timelines for reviewing draft decision, information concerning the venue of the sessions of Sakrebulo and Sakrebulo committee, approved normative acts, "various" administrative and legal acts, information on possibilities of their appeal etc.
- It introduces a legal obligation of municipal bodies to "ensure access to adopted normative acts as specified by Georgian legislation"

Comment: This article refers rather to matters of transparency than to matters of citizens' participation. The "creation of conditions" in order to ensure meetings with citizens would be more precise, if the law would simply entitle the municipalities to define by their own statutory decision specific conditions ensuring the meetings with citizens and their access and participation into sessions of municipal bodies.

Concerning publication of draft decisions etc. through "local media" the question arises, whether publication through the internet (e.g. the webpage of the municipality) would be more efficient and far less costly. Another point would be that publication of "various" administrative and legal acts raises the question who is going to decide which will be these "various" acts that will be published. Are they going to be selected randomly or according to pre-defined criteria? If Georgian legislation already prescribes what kind of administrative and legal acts must be published by municipalities, there is no problem, but if this is not already regulated, then there is the question who and under which criteria is going to select the "various" acts that will be published by each municipality. It would be necessary to define by law the acts that must be published and do not leave this option to the discretion of each municipality (legislation should at least define a minimum list or category of acts that should be published).

Article 87: Introduces the possibility of 1% of voters to submit to Sakrebulo a draft act or propose the annulment of a Sakrebulo act.

Comment: A positive article. It introduces the possibility of a popular initiative. Defining a speaker for the Sakrebulo session ensures the right to be voiced also for initiatives which are not supported by Sakrebulo members. A speaker taking part in the Sakrebulo session can also act as the genuine expression of a popular initiative. However, giving to this speaker not only the right to "take part into the review of the draft" but also the right to vote could raise questions, since he has not been elected by the electorate of the municipality (while the members of Sakrebulo have been elected by this electorate). The speaker acts on behalf of, eventually, not more than 1% of voters. However, his vote in the Sakrebulo will be equal to the vote of an elected Sakrebulo member and this can be seen as problematic in view of the equality principle and especially concerning the equivalence of voting (and representation) rights. There are doubts whether this vote of the speaker could be covered by Article 3 par. 2 of the Charter ('any other form of direct citizen participation') since this vote introduces a deviation from the equality principle which is fundamental, also for local democracy.

Another question that can be raised, is whether a popular initiative that has been rejected by the Sakrebulo can be repeated (the same draft) for a second, third etc. time and, if this would be allowed, whether an interval should be introduced (e.g. that a rejected draft cannot be submitted again by a new popular initiative before a time lapse of, for example, two years) in order to avoid misuse of popular initiatives. The definition of a speaker for such an initiative is positive. However, a time limit should be introduced for repeating of identical petitions after being rejected by the Sakrebulo (at least one year after rejection).

Furthermore, a popular initiative of 1% of voters could prove to be problematic, too low and generous in smaller municipalities where just a couple of hundreds of citizens would be able to submit drafts to the Sakrebulo. In such municipalities (e.g. smaller than 30.000, alternatively smaller than 50.000) required percentage of voters should be higher (3-5%). Finally, giving to the speaker of the initiative the right not only to speak but also to vote in the Sakrebulo could be legally problematic in terms of equality of vote, equal access to voting etc., since someone who has not been elected by the electorate of the municipality on the elections day will be entitled to vote in the Sakrebulo. The provision raises doubts whether this vote of the speaker could be covered by Article 3 par. 2 of the Charter ('any other form of direct citizen participation') in view of a serious deviation from the equality principle which is fundamental, also for local democracy.

Article 88: This article defines that sessions of Sakrebulo, district council, Sakrebulo Commissions shall be public.

Comment: Holding these sessions in public is an old democratic tradition in most European countries, promoting transparency and publicity. One should consider whether provisions of Article 86 (s. above) concerning "meetings with citizens" and citizens' participation "into sessions of municipal bodies" would be better placed here, in Article 88, while Article 86 would concentrate on issues of publication of decisions, acts. Etc. Another option would be to integrate provisions of Article 88 (and also Article 89, see the following) into a major and more systematic Article 86 that would then acquire a new title ("Ensuring Citizen Participation and Transparency in Local Governance).

Article 89: This article introduces the possibility of voters to attend public hearings and reports by municipality officials and members of Sakrebulo. Further on (in par. 2) it introduces the obligation of Gamgebeli and member of Sakrebulo to hold public meetings with constituency at least once a year. He/she should present a report on performed work and answer questions asked by the voters.

Comment: A positive article. The expression "eligible to attend without any limitation" sounds a little bit peculiar. If "every" voter can attend such hearings, then a simpler formulation would be better. If citizens attending such hearings will be selected, then the law should define criteria and procedures. In Article 89 par. 2, one could add that reports of the Gamgebeli presented in these annual public meetings are also published in the webpage of the municipality.

Chapter XI: Concept of Public Councils of Settlements

The articles 90 to 105 have been abolished by the Georgian Parliament in the first vote on the draft. The Council of Europe sees no further reasons to recommend the creation of these councils. They appeared as a very complex and ambiguous institution of which we have no example and which was difficult to evaluate. One can detect of course the motivation to create some political identity in the settlements, but the system was over-regulated and formalist considering what many of them are. They could also create certain frustration because there was such a solemn legal frame and no real means for these councils to meet expectations. If this idea is reconsidered in future, we would recommend a very light form of participation without creating a quasi-local government at that level.

Section V: The Budget of Municipalities and Economic Fundamentals

General comments and relevant European standards

This organic Law is aimed, as the Explanatory Note makes clear, at achieving two main objectives: (i) to group into one place various legal provisions governing the local authorities of the republic of Georgia; and (ii) to promote a number of reforms in the local government system which have been perceived as priority by the legislator. Among those in the second category, the most important policy changes proposed, with a particular significance for the arrangements of municipal finance and property, are:

1. A partial reversal of previous reforms implemented a few years back, which had merged the municipalities of Georgia, making them fewer and bigger; today this structure is considered suboptimal, placing sub-national elected authorities "too far away" from citizens; therefore an increase in the number of municipalities and reduction in their size is envisaged;
2. Clarification of the division of powers between the elected Mayor (Gamgebeli) and the President of Local Council (Sakrebulo), which has been found problematic, generating bicephalism (double power) and dysfunctions in the local governance (for example, on decisions to approve local taxes and fees);
3. Clarifications on the assignment of functions and sources of revenues by tiers of governance, which have been described as unclear and fluctuating;
4. The reduction of vertical imbalances in the intergovernmental finance: the local governments, despite the fact that they are large in size, do not have adequate resources to finance their own functions as required by the law, relying excessively on transfers from the center; the stated goal is therefore to strengthen the basis of local own revenues – and all the more so since the envisaged multiplication of municipalities will further fragment and weaken the local resource base;
5. The framework and practice of inter-municipal cooperation (IMC) are weak, which limits the possibility of cost optimizations through service pooling;
6. The central supervision of the local decision and service delivery is weak.

Another important policy goal, which is not stated as such in the Explanatory Note but is apparent from the text of the law, seems to be the finalization of the process of separation of public property, by putting in place a mechanism to transfer assets from the central government to municipalities or the other way around (Chapters XIII-XIV). Such provisions will be instrumental if the authorities of Georgia decide to decentralize new attributions in the future.

All these general objectives are in compliance with the provisions of the Charter, Article 9 (on the Financial Resources of Local Authorities) as measures aimed to consolidate the local financial autonomy of the Georgian municipalities and their effectiveness in service provision. Therefore, the trend should be praised and encouraged. In addition, the Explanatory Note itself is a very good policy document, stating clearly what the legislator intends to achieve with the new draft law – which again is a practice that should be praised and encouraged.

In the same time, attention should be paid to the instruments of transposing the stated policy objectives into practice and to the correlation between this draft Code and other relevant pieces of legislation. To the extent that we could analyze the matter, three general observations must be made before moving to comment the draft Code by articles.

First, the system of local finance, and in particular the local taxation, is still under-specified both in this draft Code of Local Self-Government and in the Budgetary Code of Georgia. In neither act a good description of the system of local taxation could be found, in order to determine the real freedom of municipalities to set, modify and collect local taxes. Article 110 (1-3) of this draft Code is laconic and vague on the subject (see also comments below). From previous assessments based on cross-country data collected[3], we know that Georgian municipalities rely mostly on the property tax as source of own revenues, a tax which they do not collect directly and have limited powers to modify.

The local budgets amount to 12-13% of the total public expenditure (and the calculation also covers the Autonomous Republics), which is rather low by European standards, and there is no substantial national tax shared by the government with municipalities[4]. As a result, the system seems to be falling somewhat short of the provision in Art 9(4) of the Charter: to have local resources "of a sufficiently diversified and buoyant nature". In this respect, it is not clear what are the substantial changes introduced by the new draft Code; and in particular, what kind of secondary legislation (or amendments to other laws) does the legislator intend to pass in order to fully operationalize Article 110 of this draft Code.

Second, there exists a certain disproportion in the economy of the text. While, as indicated, important elements of local autonomy such as local taxation are insufficiently addressed (in this draft Code or the Budget Code) other aspects are discussed in too much detail. For example, chapter XV, Art 135-136 describe procedures for acquiring or disposing of municipal property through auctions, details which would be best included in a Public Procurement / Concessions Law (if such a law exists), because they are common to all the public institutions of Georgia, not specific to local authorities.

In general, chapters XIII, XIV and XV mix up two things which are very different legally and logically:

(a) the transfer of property among tiers of governance (from government to municipalities or the other way around) within the public sphere; and
(b) the transfer of property or rights thereof *outside* the public sphere, through selling to a private partner the property in its entirety or some right to use it.
The rules and requirements governing the two processes should be kept separate. For example, there should always be an obligation to hold an open and competitive process in the case (b) in order to extract the maximum of benefits for the local community; this is not applicable to (a). The current text shifts back and forth between elements of (a) and (b) from Art 121 down to Art 145, creating confusion and loopholes (see comment at Art 139).

[3] http://www.coe.int/t/dgap/localdemocracy/Conferences_Events/Conference_Recession/Financial_Crisis_2012_en.asp

[4] The special regime of the Autonomous Republics does not form the object of this analysis; we refer only to the municipalities proper.

Third, as already mentioned the translation of the draft Code into English poses challenges, in particular in this Section, where some technical terms are used in a rather vague and inconsistent manner. As a result, the general comments made above and the detailed ones following below should be taken with a note of caution.

Chapter XII. The budget of municipalities

Articles 106-107 of the draft Code introduce the principles of unity and independence of municipal budgets, reflecting the provisions of the Constitution of the country**.**

Article 108 describes the mechanics of budgets review and approval, with responsibilities and deadlines, requirements of public transparency and the usual provisions for monthly disbursements in case the approval of the budget is delayed (Article 108 (8)). If no budget is passed by the council (Sakrebulo), either that proposed by the mayor or an alternative one initiated by the council itself and approved by a super-majority of 3/5 of its members, the government is entitled to dissolve the municipal council.

Comment: most of these provisions are in compliance with the Charter. However the possibility of the Sakrebulo to initiate alternative budgets, which the mayor is subsequently forced to execute, may raise political problems in instances of cohabitation (mayors and Sakrebulo majorities of different colors), aggravating the signaled problem of municipal 'bicephalism' (double power). While this problem is somehow alleviated by the qualified majority needed to vote such budget, this opens the door to (possibly excessive) central government interference.

Articles 109-116 define the revenues of the municipal budget, following a breakdown which is largely consistent with the OECD classification, in its turn inspired from Recommendation Rec(2005)1 of the Committee of Ministers to member states on the financial resources of local and regional authorities[5]. Own revenues are clearly separated from the general-purpose transfer from the government (equalization, Article 112), the capital grants (Article 113) and the earmarked transfers which finance delegated attributions (Article 114). The system of inter-governmental transfers has been indeed improved by defining a capital grants system (Article 113) apart from other types of transfers, as announced in the Explanatory Note, which makes it easier to prescribe the latter (mostly, aimed at financing social functions) with formulae and per-capita allocations, thus increasing the transparency and predictability of local revenue. A special transfer (in fact, an emergency fund) is established (Article 115), which is good practice. The principle on which the equalization fund is based is that of *revenue potential* and objective formulae (Article 112(2)), which is also good practice[6] and in line with the guidelines given by CM Rec(2005)1.

[5] https://wcd.coe.int/ViewDoc.jsp?id=812131

[6] However, Decree 904 / 2009 of the Ministry of Finance, providing detailed instructions about how equalization fund is determined and distributed, may raise concerns about the complexity of the formula: if too many criteria are introduced, plus city-specific coefficients, the benefits of transparency and predictability are lost and the allocations become historical budgeting by the backdoor. The matter is not trivial because the equalization grants make up to 25-40% of municipal budgets, far above the level of own revenues.

Comment: In Article 109 (1d) it is not clear what the "commitments" are (a type municipal revenue: loans? accrued revenues or something different?) It may be a matter of awkward translation, but the logic here is not clear. More importantly, Article 110 (3) says that local taxes are "administered by tax authorities". Are these state tax authorities or offices in the subordination of the local government (and if so, which branch: the mayor's office or the council?) If the former, this would be a serious limitation to the local financial autonomy and a remedy may be considered in the future, by establishing fully fledged local tax offices.

Article 117 deals with municipal borrowing, with limitations imposed in some other countries too: funds must be used only for capital investments; approval is necessary by the Government; a ceiling is set at 10% of the average income over the past three years; the municipal property cannot be used as collateral. Given the state of under-development of the domestic financial market and the associated high risk premiums, these rules which are rather conservative, quite restrictive and hence not fully in line with the local autonomy are understandable, especially in the context of the financial crisis.

Comment: However, the point in Article 117 (1) that municipalities may take loans from "natural persons" (?) is highly unusual and potentially dangerous. Unless this is not a translation error, or if municipal borrowing is not additionally qualified by other laws (such as a Banking Law) that we do not have access to, the provision should be eliminated.

Articles 118-120 deal with the municipal spending, restating the principle of unitary, cash-based budgeting (118(1)) in conditions of independence of local decision-making (Article 119), and the principle of financial compensation by the higher-level governance tiers when they impose on municipalities measures that impact their budgets (Article 120).

Comments: We have here the same ambiguity in terminology ("commitments" in Article 118 (1d)) and a formulation which, in its current English version, is incomprehensible (Article 119). If this is not a translation error, the article sounds redundant. Article 118 (2) establishes the obligation to use at least 1% of the total budget for trainings for civil servants. While such a provision is not unique to Georgia, the experience from other East European countries shows that its usefulness is questionable in terms of achieving the intended policy outcome: capacity development in the local administration. Unless training needs are clearly identified through a modern and effective Human Resource Management system, this provision is may generate an artificial demand for trainings which is difficult to manage and may create unwanted effects.

Chapter XIII Municipal property

Articles 121-123 prescribe the applicability of this Code to the municipal property, by defining comprehensively these types of property and the conditions for its disposal. Following the tradition of continental administrative law, the municipal property is divided into "basic (inalienable) and additional" (Article 123 (3)), the first being put under a special regime of protection and subject to approval by the Government.

Comment: Article 121 is unfortunately hard to understand when it lists the exceptions from the definitions of municipal property. Article 121 (2a) lists as exceptions the "goods and services… purchased for further distribution, dispensation or other kind of disposal…" and other cases referred to in the Procurement Law (2b). With no access to the latter act, this cannot be commented; however it is not clear what did the legislator intend to achieve with the exception under (2a) and why goods and services acquired for further redistribution "or other kind of disposal" should not be considered municipal property. The same is true about parts and materials obtained "as a result of reconstruction, repair, dismantling or demolition of buildings" (Article 121 (2c)) – why should these not be considered municipal property? Article 121(3) sounds like an incomplete text or maybe copy-paste error.

Articles 124-125 regulate the transfer of public property from state to municipalities, and from municipalities back to the state, which looks like the final stage in a process of separating the public property by tiers of governance. Such clarifications are welcome in principle, although it could not be determined from the documents available if this is an immediate priority for the country, or just an instrument to ensure that further decentralizations will proceed smoothly. The list with the types of public property transferred to / or confirmed into municipal ownership is by and large reasonable (Article 124 (a-e)).

Comments: It is however difficult to understand why, when agricultural land is transferred to municipalities, an exception is made for "land for historical, cultural, natural and religious monuments" (Article 124 (e.e)). What kind of agricultural land is "for historical and cultural monuments"? If these are religious or lay complexes of buildings with agricultural land included in their perimeter, why is this land treated separately from the institution as such? If a monument or natural reserve is decided to be of local importance and transferred to a municipality, the agro land will follow it; if not, not. The provision sounds redundant, unless something is misleading in the formulation.

Article 125 (1) is also a little confusing: it appears to say that the local council (Sakrebulo) can decide by vote to give away freely municipal assets to the state. Such situations may occur, for example, when a local road is reclassified as national road and transferred to the relevant national authority. So far, so good. However it is not clear why the decision of the Sakrebulo is taken "on the justified appeal of the owner of the property". What does this mean? Before the transfer is approved, the owner of the property is the concerned municipality itself, so who exactly should submit the "justified appeal" and to whom? Is this also a matter of translation? The same observation for Art 125 (2): who is "the initiator"?

Article 126-127 confirm the protection awarded by law to the municipal property, and the principles of good management of this property: independence in decision making by the municipality and the use of property in the best interests of the residents. Article 127(4) confirms the provisions of Article 117 that municipal property – even the "additional property" – cannot be used as collateral against loans.

Comment: This is an extreme form of protection of the municipal property by international standards; in general the pledging of some forms of movable or immovable local property against loans is allowed. Naturally, there is a downside to this over-protection, which may be justified in the conditions of the country: such provisions make difficult the process of municipal borrowing, creditors having to rely exclusively on future cash flows as collateral (unless of course there is some explicit or implicit guarantee offered by the central government for such municipal loans).

Chapter XIV. The "foundation" of municipal property

Article 128 specifies the ways in which the municipal property can be acquired: by central transfer, buying or generating it using resources from the budget; or through transactions under the Civil Code. **Articles 129-131** deal again with the issue of the separation of state and municipal property, possibly as a one-off process to finalize the transition, or in case that further decentralizations of attributions may occur. The assets which are necessary for the execution of local functions will be transferred to municipalities free of charge, following a request made by the mayor to the relevant state authorities.

Comment: it is not clear why these four articles form a separate chapter and are not shifted into the previous one, after Articles 124-125 which deal with similar matters: transfers of public property between tiers of governance.

Chapter XV. Privatization of the Municipal property and transfers under the right to use

Articles 132-134 define how the privatization or concession out of the municipal property happens, who represents the municipality in the process and who can buy or concession such property. Restrictions apply to the agricultural land, which cannot be sold as freely as other types of assets; details are to be provided in non-specified legislation. In case of selling, the government of the country will set rules for how the process will take place and what the initial price will be. (However details are not fully clear due to typos and copy-paste errors in the text).

Articles 135-137 set the rules for the privatization (selling) of municipal property, based on the principle of open, public and competitive auctions, including elements of electronic tendering (Article 135(1)). Articles 136-137 prescribe the steps to be followed in organizing the auction and signing the contract.

Comment: the whole logic of steps for selling ("privatizing") public assets apply not only to the municipal property, but to all public property owned by a public entity in Georgia. There is nothing specific to local governments about the requirement to hold such open and competitive procedures, and the steps to be followed, how e-auctions are organized, contracts signed, etc. Therefore the right place to address such issues the Law (laws?) dealing with Public Procurement / Concession in general. We recommend a review of this body of legislation, for which the Georgian authorities may want to use as a source of inspiration the relevant acquits of the EU, and the shifting of these provisions there at the appropriate moment.

Moreover, Article 135(2) makes a strange exception from the requirement of competitive procedure for the property under an insurance contract, which could be "exchanged or reimbursed for" by the insurer. This provision is unnecessary because the insurance contract was (presumably) purchased itself through competitive procurement (to be checked in the relevant law); if a piece of municipal property is damaged or destroyed as a result of an insured event, the compensation paid by the insurer can in no way be presented as a "privatization". This paragraph is confusing and either redundant, or dangerous because it creates a loophole for a non-competitive disposal of municipal property; it should preferably be deleted.

Article 138 deals with the disposal of basic (inalienable) municipal property, presented as a special case of privatization described previously in Articles 135-137. The need to treat it separately is obvious due to the special protection this kind of property has. The procedure is that the mayor makes the proposal to dispose of basic property and the council approves it with supermajority (2/3).

Comment: The procedure seems to go in a roundabout. There may be situations when "basic" property (inalienable) needs to be declassified into the additional (alienable) category, without necessarily disposing of it in any way. Once such a procedure exists, Article 138 becomes redundant, because the local government would follow it and change the category of property, and if selling or concessioning out must be done, it would follow Articles 132-137. In conclusion, the logical thing to do is replace Art 138 with a procedure to change the category of municipal property.

Article 139 defines the types of transfer of the right to use a piece of municipal property, which are in line with the normal practice in other countries and the legal system of Georgia. The methodology for determining the price (or initial price) is decided by the government of the country (Article 139(3)), while the rest of the procedure is performed by the local authorities.

Comments: there are obvious loopholes in the provisions governing the transfer of the right to use the municipal property. Article 139 (1a) which reads "build" should instead be "build-operate-transfer", to be aligned with the current international practice.

The biggest loophole is found however in Article 139(7), which says that "transfer of municipal property with the right to use is ensured through auction or rule of direct disposal". Beyond the awkward translation, this is unacceptably vague: any contract giving away to a private partner the possibility to use municipal property should be the result of an open and competitive procedure, following the rules of the Procurement / Concession legislation, to which direct reference must be made here. There is no justification to lend, lease or cede the usufruct of municipal property by "direct disposal" to any individual or company, without demonstrably trying to obtain the maximum benefits for the municipality and its citizens. Doing otherwise infringes the provisions in Articles 126 and 127 of this draft Code.

It is also unclear why Article 139(8) limits the contracting out of the management of municipal property to periods of maximum two years. This is an arbitrary, very restrictive and unusual requirement which may affect the best management of property; moreover, the language is vague due to translation and it is not clear if the two years limitation applies only to the transfer of management rights, or to all the forms listed in Article 139(1a-f). If the latter, the provision is even more unfeasible.

Article 140 specifies the conditions under which the state authorities can cede to municipalities the right to use public property in order to perform their delegated functions.

Comment: strangely the Code does not list anywhere the main attributions delegated to the Georgian municipalities, so it is difficult to assess what type of property this article refers to. Since one of the reasons for adopting this Code was to consolidate into one place the legal provisions concerning the functioning of local governments, the initiator may want to review the sectorial legislation and include an article (in Section I) listing the main delegated functions, probably in the areas of primary and secondary education, social protection, etc.

Article 141-144 appear to deal with the intangible property of the municipality in the form of financial instruments (bonds, equities, derivatives, etc.) and its right to form joint stock companies, Ltds or non-profit entities. Articles 143-144 state that the disposal of such property or of the right to manage it must be done through auction, which is correct.

Comment: the legal definition of the financial instruments must be checked on the original text to ensure it is correct and complete; the English text suggests that there may be confusions throughout: ex “auctions (?!) and shares… might be transferred…” (Art 141(1)).

Article 145 requires that the proceeds from municipal property disposal be part of the municipal budget.

Comment: this is correct but incomplete. Good practice requires that such proceeds should be used only for capital investments or maintenance on the remaining stock of assets, and not for other types of current expenditure, in order to prevent the erosion of local capital over time.

Section VI: State supervision, audit and direct state governance

Relevant European Standards

The relevant rules on administrative supervision in the European Charter on Local Self-Government are contained in Articles 8, 11, and 5.

Chapter XVI: State supervision of activities of self-government bodies

Article 146 defines the various sorts of state supervision:

- Legal supervision is dedicated to spheres of municipal authority (understood as areas where municipalities have full and exclusive authority)
- “Field supervision” is dedicated to areas which have been delegated to municipalities

In A**rticle 147**, a new terminology is introduced: "sectoral supervision".

Comment: It is suggested that the wording in Article 146 “field supervision” be replaced by “sectoral supervision”

Article 148 describes the procedures and principles behind state supervision with reference to e.g. the Charter, the Constitution of Georgia, and "procedures established by this code" and states it is inadmissible to establish different procedures and frameworks of the state supervision. Paragraph 2 states directly that state supervision is carried out according to the proportionality principle (cf. the Charter, Article 8, paragraph 3).

Comment: It's good that the wording contains these references and the proportionality principle is also mentioned.

Article 149 describes the different steps in the legal supervision. The conclusion of the legal supervision's body is of recommendatory character (paragraph 3) and can be accepted or revoked by the municipality. If the recommendation is revoked, the supervision body can present the case to the court (paragraph 5). If the decision of the court goes against the municipality, it can appeal against the court's decision or take the case to a higher court instance.

Comment: This is acceptable and secures a fair process where a municipality can use the court system in case of disagreement with the supervisory body.

Paragraph 7 is however problematic: If a legal act of a municipality contradicts with the norms of the Constitution of Georgia, or significantly violates Georgian legislation, or causes substantial and irreparable damage to the constitutional rights and freedoms, the legal supervisory body can immediately apply to the court for annulations or suspension of the act.

Comment: The problematic issue is here the quantification "significantly", "substantial and irreparable damage" – how can the court objectively decide if legal acts are of this nature?

It is however appreciated that the final decision rests with the court system, and not with the legal supervisory institution.

Article 150 deals with sectoral supervision and subsequent articles 151,152,153,154,155,156 spell out in details the different procedures for a number of instances spelled out in Article 150 (3).

This is the form of supervision that the Charter deals with in paragraph 2 of Article 8: "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".

Article 151 talks of "instructions recommended" which the supervision body can issue, and Article 153 of "mandatory guidelines".

Comment: It is difficult to understand why two different kinds of "instructions/guidelines" can/should be elaborated. We may suggest possibly deleting the Article 151.

Instead, it should be mandatory for the ministry delegating responsibilities to municipalities to elaborate guidelines for how to handle the responsibilities at the time of the transfer of responsibilities, and not at the time of supervision.

At the same time, attention should also be kept to Article 5 in the Charter, where local authorities should have discretion to solve the tasks given to them.

Article 152 stipulates that municipalities are obliged to submit the requested documentation and information to the supervisory body within 5 days.

Comment: It is difficult to evaluate if this deadline is reasonable (depending upon if information can be submitted electronically), and the phrase in paragraph 1 "any" official document and information, legal acts and administrative materials may easily become not proportional.

Article 155 defines when the supervisory body may suspend/terminate any legal act issued by a municipality within the scope of delegated responsibilities.

If a municipality does not follow the mandatory guidelines within 30 days after receiving them, the supervisory body takes decision to cancel the administrative-legal acts within the scope of delegated responsibilities. The municipality will have 15 days to forward the administrative-legal acts following the decision of the supervisory body, or to forward justified rejections to amendments made.

However, legal acts of a municipality can be suspended immediately, if they contradict with the norms of the Constitution of Georgia, or substantially violate Georgian legislation, or causes significant damage to the constitutional rights and independence of the citizens or causes irrational and non-targeted use of state property and budget funds.

Comment: The problematic issue is here the quantification "substantially violates", "significant damage", "irrational and non-target use" – it is not clear how can the ministry objectively decide if legal acts are of this nature.

It is even more problematic in **Article 155** than in **Article 149** above as the court system is not involved in the sectoral inspection.

Article 155 (6) says: "For the purposes of proper implementation of the delegated responsibilities, the administrative-legal act of the municipality can be terminated with the motives of irrelevance if it does not correspond to the guidelines of the supervisory bodies. "This decision should however be motivated.

Comment: It should be clarified why to introduce this classification of "irrelevance" of some administrative-legal acts? In this regard the provisions in **Article 155 (2)** should suffice.

Article 155 (8) provides a possibility of the municipality to appeal the legality of the decisions of the supervisory body "according with the rules established by the Georgian legislation". It is difficult to define what this implies.

Comment: As is the case for legal supervision, municipalities should also for sectoral supervision have a possibility to present their complaints and appeals to the court system.

Article 156 includes provisions for taking away delegated responsibilities from municipalities if the responsibilities are not implemented.

If municipalities do not fulfil or insufficiently fulfil delegated responsibilities, the supervisory body is authorized to request sufficient execution of the obligations, defined by guidelines and instructions issued for the purpose, and to demand improvement of the situation within a deadline, that should not be less than 15 working days, and the deadline may be prolonged (paragraph 4).

The municipality is obliged to forward information about the implemented measures.

If the supervisory body after the end of the deadline finds that a municipality insufficiently or not at all executes the responsibilities, and that improvement of the situation is impossible, the delegated responsibilities will be executed by the state supervision body.

Comment: Instead of talking about the "state supervision body" taking over delegated responsibilities, it would be more appropriate to say that the "relevant sector ministry" takes over (and the state supervision body, meaning relevant sector ministry). A supervision body is normally not an institution implementing comprehensive public responsibilities.

In case delegated responsibilities are taken away from municipalities, they can appeal in accordance with the rules established by the Georgian legislation. It is difficult to comprehend what this implies.

As is the case for legal supervision, municipalities should also for sectoral supervision have a possibility to present their complaints and appeals to the court system.

Article 157 provides possibilities for municipalities to receive legal consultations by the supervisory body.

Comment: This is a positive provision.

Article 158 prescribes the supervisory body to elaborate and publish an official report of the supervisions conducted throughout the year. The report should be published no later than 1 February the following year. Paragraph 2 explains which information the report should contain, and paragraph 3 directs the supervisory body to submit the report to the Government and Parliament within 15 days after the elaboration of the report.

Comment: This too is seen as a positive provision.

However, it is not clear if this article includes both the legal supervision and the sectoral supervision. Both the legal and sectoral supervision should be included. This should be explained clearly in the article.

Chapter XVII: Audit of the activities of municipal entities

Article 159 introduces three forms of audit that should ensure the legitimacy and efficiency of the activities of the municipal entities:

- State audit
- Independent audit
- Internal audit

Comment: It says that "the following is implemented", which implies it is mandatory, but that is actually not the case, as the independent audit seems to be optional. The text should be very clear on what is mandatory and what it voluntary.

Article 160 lays out the different forms of audit:

Article 160 (1) says the state audit should take place on the basis of the law on the State Audit Office.
Article 160 (2) says that "the invited auditor is authorized to conduct the independent audit of the activities of the municipality once in a year based on a decision by the Sakrebulo approved by 1/3 of the members".

Comment: Here it is not clear why only 1/3 of the council members decide upon this? Presumably in order to protect the minority in the council against abuse, but potential abuse should already have been captured by the State Audit Office.

It can be suggested just to demand that "a municipality must submit its financial accounts for independent audit. This audit must be done by the State Audit Office but can be supplemented by independent audit".

Paragraph 3 says the internal audit of the executive body of the municipality is being implemented in accordance with the law on "Public Internal Financial Control" and that internal auditors are assigned by the resolution of the Assembly (Sakrebulo)/Council of Gamgeoba (city hall).

Comment: This provision is very vaguely formulated.

- Is it optional to undertake internal audit or mandatory?
- It needs to be clarified which institution takes decision about the internal audit – the Assembly (Sakrebulo)/Council of Gamgeoba.

The text should be more clearly formulated.

Chapter XVIII: Direct state governance, dissolution, suspension of activity and early termination of assembly

Article 161 says an assembly may be dissolved or its activities suspended if a representative body due to its activity "endangers state sovereignty, territorial integrity, and exercise of constitutional authority of state governing bodies". A reference is made to the Constitution, Article 73, paragraph J.

This dissolution should be done by a decree issued by the President of Georgia upon proposal of the Government of Georgia and by consent of the Parliament of Georgia.

Comment: In no European country this is the case. The interventions of Parliament risks giving a highly political flavour to this decision and, even, make it impossible.

However, with reference to the Charter, Article 11, an assembly should have access to protest against such a decision by taking the case to the court, in this case probably the Constitutional Court as reference is made to the Constitution.

The phrases in paragraph 1 "endangers state sovereignty, territorial integrity, and exercise of constitutional authority of state governing bodies" may certainly be open for interpretation to which a Constitutional Court might be best qualified and most impartial.

Article 162 defines when early termination of an assembly can take place. This should be done by a decree by the Government of Georgia.

Article 162 (1) speaks about a situation where "a self-governing body is disabled by the decree of the Parliament of Georgia".

Comment: It is not clear which situations may lead to such a Parliamentary decree.

With reference to Article 11 of the Charter, an assembly should have access to protest against such a decision or early termination by taking the case to the court.

Article 163 describes when direct state governance can take place. It follows a) Dissolution of an assembly or suspension of its activity, or b) Early termination of an assembly.

The decision about direct state governance is taken by the Government of Georgia and implemented by a government attorney appointed by the Government of Georgia, or a collegial body (special administration) or a person authorized according to this code.

Article 164 describes how direct state governance can take place.

Article 164 (4) states that the "legality of the decision on dismissal of the municipal body, suspension of authorities, and early termination may be appealed in accordance with Georgian legislation".

Article 164 (5) states that an appeal may be brought forward by no less than six members of the dismissed, suspended, or terminated Sakrebulo or by the respective Gamgebeli (Mayor).

Comment: In addition to the comments made in relation to **Article 161 and 162**, it is vital that an appeal may be brought forward to the court system.

Article 165 states what comes after the end of the direct state governance. If less than one year remains of the municipal election period, the direct state governance will last until the next ordinary municipal elections. If more than one year remains of the election period, extraordinary municipal elections will be called of both the assembly and the mayor.

Comment: These provisions are in compliance with norms.

Article 165 (2) is relatively unclear. It is suggested redraft it as follows: "When extraordinary or ordinary municipal elections have taken place in accordance with the provisions in paragraph 1, and the assembly and the mayor have resumed work, the direct state governance of the municipality ends automatically."

Section VII: REGIONAL ADVISORY COUNCIL (New articles 144-147)

This section has been drastically amended by the Parliament and the present text is totally different from the draft that had been originally transmitted to the Council of Europe.

This is a positive evolution; the CoE in its first opinion was quite critical about the Regional Union of Municipalities and had serious reservations concerning these provisions. This entirely new institution in Georgia looked quite original. Considering its denomination and its position in this Code one could imagine that it was a form of local self–government, either an inter-municipal cooperation entity organized on a regional level or a specific model of a "region". It was none of them and had, in fact a specific nature of State Agency dedicated to regional development policy thanks to organized cooperation between state administrations and municipal politicians. The status of a legal body created great confusion and the rules for election of the council of the RUM were too complicated, with possible negative side effects.

The core political aim of Section VII in its former and present redaction is to establish, at a regional level, a specific form of cooperation between state authorities and representatives of municipalities in a structure that is still fundamentally a state administration. The new proposed model seems to be an appropriate solution.

A specific institution dedicated to regional development policy

The Council of Europe has supported since many years several programmes on regional development in Georgia, considering that this is a crucial issue for the strengthening of the national economy and the improvement of territorial administration. Citizens will benefit from richer regions. The latter will also allow the allocation of better means to the municipalities and thus consolidate local self-government. Previously the Council of Europe has made proposals on these subjects.

Considering the specific history and general situation of Georgia, it is evident that institutions of state administration, especially the technical line ministries and the state budget, will continue to play an important role in regional development. The state is a major actor because it has fiscal capacities and the possibility to attract private or public investment projects or financing from donors or from international banks (the World Bank). In the regional services or in the central ministries, the state employs staff with technical training in domains where special expertise is needed, which is not the case of municipalities. Infrastructures of transportation or communication have strategic dimensions that give special legitimacy to the state for participating in their definition and programming. The Council of Europe, thanks to its collaboration with Georgian authorities on regional economic and social development policies, is fully aware of this reality.

But the Council of Europe continuously underlined also the need of better participation of local self-government in regional development policies since their conception to their implementation. Experience proves that municipal actors, politicians and employees, should be directly involved in these policies, in order for them to take into account the local specificities, to strengthen the expertise of these persons and to facilitate convergent policies in matters under the responsibility of municipalities (water delivery, waste collection, streets and transportation, etc.). Cooperation between the central state and local self-government bodies is particularly important in a country which has the geography, the economic level of development and the political culture of Georgia.

So, the "invention" of pertinent forms of cooperation between state and municipal actors for regional development is a recurring question in the debate on territorial reform in Georgia, as it is in many other countries. The proposed solution in this draft seems to be a good compromise. The Council of Europe finds it preferable to have a state – local self-government cooperation procedure.

As this is clearly a way to strengthen the capacities of municipalities to influence regional policies and as the regional advisory council is fully composed with legitimate delegates of municipalities, these provisions can find place in the Code on local self-government.

Chapter XIX: Status and Authority of Regional advisory council

Article 144. Status of the Regional Advisory Council

The wording of this article could be slightly modified as follows:

"1. Regional Advisory Council is an advisory body of municipalities established to cooperate with the State Trustee-Governor, mainly in order to improve regional development policies; it is set up and operates under the rule established by the present code.
2. The goal of Regional Advisory Council implies ensuring presentation and entertaining of municipalities' interests and their coordination with broader regional interests in the course of a certain territory development planning and its implementation."

Article 145. Regional Advisory Council Composition

Comment: It is coherent with the functions and aim of this council that the representatives of the municipalities are persons who have effective responsibilities in these municipalities. As they have to adjust local and regional interests and policies they must be persons who have direct influence on municipal affairs and can speak officially in the name of the local governments.

Section VIII – Transitional and Conclusive Provisions

General Comments

Transitional provisions are generally not meant to stay in force longer than the period of time there specified and needed for the full implementation of a given piece of legislation. As such they may, at times, derogate from some of the norms consecrated in the respective statute in order to allow for a smooth conversion from one legal regime to another. However, the basic principles underlying the newer legislation have to be properly taken into account by the transitional and final provisions as well. At the same time, since their purpose is to facilitate implementation of the newer legislation the issue of potential risks they may raise is even of greater importance than in the case of other provisions of the same piece of legislation. Therefore, the evaluation of transitional and final provisions will not be done according to the same criteria as the rest of the draft Code, but the yardstick of the potential implementation will bear a greater role in this case.

Chapter XX – Transitional Provisions

Article 179 (in the original version of the draft law) is of utmost importance. As said above, it would be pertinent to change the place of these provisions and have them in Chapter 2 of Section I.

The deadlines it fixes (one month for the identification of criteria for the territorial optimization and defining the territorial boundaries of the districts of Tbilisi as capital city and three months for actual creation of additional self-governing cities and reviewing motions from the municipalities which have not been chosen as self-governing cities) seem extremely short and not realistic considering all the experience of some other countries. Both the “technical” aspect of this procedure (criteria, new maps...) and the political one (bargaining with the different political forces concerned by each modification, representatives of the population or economic forces) will require much more time. This is a huge and costly “institutional investment” that is meant to last for a long time, so a rush would be counter-productive.

Considering the guarantee of stability for the existing municipalities and the gravity of changing the map of the municipalities in the whole country, the Council of Europe considers that leaving a totally discretionary power to an administrative committee for defining the criteria of creation of the new municipalities is not complying with the principles of the Charter. This is definitively something that needs to be rooted in the law. The latter does not have to go in all details and deal with technical considerations, but it has to deal with cases when the existence of local self-governing bodies is concerned. Therefore the law must contain general principals of methodology or main guidelines for defining the criteria. They must be public, objective, transparent and coherent with the functions or competences that are given to the new municipality.

Some suggestions are put forward, considering that it is the full responsibility of the Parliament of Georgia to write these provisions. So, the article or the relevant paragraph in an article could read as follows:

Article 179 Territorial optimization of municipalities

"State Commission for Regional Development established by the resolution N 297 of September 28, 2010 of the Government of Georgia "On approval of the provision of State Commission for Regional Development of Georgia" (hereinafter – State Commission):

Develops the criteria of territorial optimization of municipalities within the term of one month after issuing the present Code; these criteria must be public, objective, transparent and coherent with the functions that are given to the municipality; they refer to existing infrastructures and services that will be under the authority of a municipality; they give a figure of the minimal size of population required to become a municipality, considering the geographical and managerial constraints; they take into account the distance in time between the different settlements and the administrative centre of the municipality; cultural or ethnic considerations must be explicit if they are considered as decisive."

In order to ensure their full and strict respect it might useful to append an additional article within final provisions of the draft Code that would state "Article 179 shall enter into force upon the coming into force of the criteria of territorial optimisation of municipalities and of the territorial boundaries of Tbilisi districts."

Comment: Mention has to be made here that some of the transitional provisions set forth in Article 179 are not fully in line with articles 8, 10 and 11 of the current draft law: Article 8 empowers the Ministry of Regional Development and Infrastructure only to carry out an analysis of the functioning of local self-government, while articles 10 and 11 describe a different procedure for the division/merging of municipalities and changing of their borders, procedure which is fully in line with requirements of the Charter. Chances are that some of the basic problems which have motivated Georgian authorities to embark on a reform process in the local self-government will be merely prolonged via such temporary measures despite meritorious provisions in the body of the Code.

Article 181 is also diverging form basic principles of this draft Code with regard to the drawing up of budgets of local self-governments. Moreover, the ambitious calendar is fixes seems to have as departing point the fact that local elections should be held in 2014 at a date which is already fixed and known for the drafters but which remains unknown for the Council of Europe. The serious involvement of bodies of the central government (line ministries) in the preparation and drafting of local budgets may raise some questions with regard to the standards of local self-government promoted elsewhere by this draft Code.

Article 186

Comment: Article 6 of the Charter provides that local authorities have the capacity and liberty to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management. But this does not prohibit national rules on the employees and the structures of municipalities. Standards of good practices, guides for sane financial management, and rules that prevent appointment of an excessive number of employees for political reasons ("clientelism") or even for social ones, considering the size and resources of the municipality are frequent in Europe, especially in a period of crisis. This should yet not allow state authorities to have direct authority on the management of employees and the organization of structures. When the national rules are fixed it is the general legal control of local government decisions which will be applied and verify if the national standards are respected or not.

Article 189

Comment: This may be an issue related to translation but it remained difficult to grasp the meaning or the scope of Article 189 which seems to rule that central state's "appropriate bodies" should "carry out projects essential for the own powers" of local self-government until the 1st of January 2018. If this would mean that local self-government is prevented from exercising its rights and abilities to regulate and manage a substantial share of public affairs under their own responsibility it would be a major infringement of Article 1 of the Charter of Local Self-Government and would deny any intentions of central authorities to actually enforce local self-government in Georgia even if only for a limited period of time which is, however, not unimportant.

Chapter XXI Conclusive provisions

The Chapter does not require any further comments.