# Local democracy in Europe and in Ukraine

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Speech by Marc Cools, Rapporteur of the Congress of Local and Regional Authorities of the Council of Europe for Local Democracy in Ukraine.

Ladies and gentlemen, in your titles and qualities,
Dear colleagues,

I am pleased to represent the Congress of Local and Regional Authorities of the Council of Europe, together with my colleague Andrew BOFF and your compatriot Yulia SVITLYCHNA. The Congress is one of the two political assemblies of the Council of Europe, the other being the Parliamentary Assembly. The Congress brings together local and regional elected representatives from 47 European countries. That is to say of all the European countries except Belarus. In total, the Council of Europe and the Congress represent 800 million Europeans!

The Council of Europe's three priorities are the rule of law, human rights and democracy. The Congress is more specifically in charge of monitoring local democracy in the various member States of the Council of Europe. I am honoured to have been chosen as the rapporteur for local democracy in Ukraine and to have made several visits to your country since 2013. My first visit took place in April 2013 in a very different political context from today, since it was still Mr Yanukovych who was President of Ukraine at that time. I have been asked to give a presentation on local democracy in Europe and Ukraine and to present the European Charter of Local Self-Government. That is what I will do in a few moments. But first of all I would like to say that I am delighted to be among you for these three days of workshop. I am here to listen to you and I hope that our exchanges of experience will be fruitful.

**The European Charter of Local Self-Government** was adopted by the Congress in 1985 and ratified by Ukraine in 1997. It is a binding legal instrument and a reference treaty for the protection of the rights of local and regional authorities, such as: the right to autonomy, to elect their own local bodies, to have their own administrative structures and sufficient financial resources. It is a short text which includes 18 articles; all of them have been ratified by Ukraine. It applies to local authorities as well as to regional authorities, except for the countries which have placed a restriction on its scope. This is not the case for Ukraine. This text enshrines in particular the obligation to consult local and regional authorities before measures having financial consequences for them are taken. Your country also ratified the Additional Protocol to the Charter on the Right to Participate in Local Government Affairs in 2014. It is an important text that guarantees the transparency of local management and encourages the participation of citizens.

The Charter, as an international treaty, has the force of law in each country and should apply directly in each member State. It is the case in some countries, and, based on the Charter, judicial decisions cancelled measures contrary to it. I have been able to witness it once again during a mission in Switzerland, at the beginning of this year. However, other countries have a different attitude. It is the case for example of Italy, where the Constitutional Court ruled that the Charter is not binding on the national judicial powers. Indeed, in some countries the Supreme Courts consider that the provisions of the Charter are "too vague" to establish concrete rights and obligations recognised by national legislation. By signing and ratifying the Charter, the member States have undertaken to implement its provisions. Consequently, no specific domestic decision or legal interpretation can justify non-compliance with its provisions.

As a principle, a mission is sent to each member State every 5 to 8 years in order to check the application of the Charter. As a conclusion to each mission, a report and recommendations are adopted. In most countries the Charter is generally respected. There are, however, cases of violation or partial compliance. It is the case especially in countries of the Caucasus region (which have experienced armed conflicts in recent years) and in some successor States of the Soviet Union, but also in older democracies of Western Europe. The financial crisis of 2008 is not unrelated to this situation, and throughout Europe, to varying degrees, there is a tendency towards recentralisation. There is even, in some federal countries like mine, a regional centralism which is stronger than the centralism of the old national state.

Until now, two monitoring missions took place in Ukraine. These led to reports and recommendations adopted by the Congress respectively in 2001 and in October 2013, shortly before Maïdan. In the 2013 report we highlighted the lack of progress on local and regional democracy between 2001 and 2013. We highlighted the significant delays in the work of the Constitutional Assembly to implement a genuine territorial reform and we found that the country remained much centralised. We encouraged the Ukrainian authorities to rapidly implement genuine decentralisation, including a clear division of powers and administrative action between the State and local authorities, a strengthening of the financial autonomy of the same local authorities, a fair and transparent equalisation system, and the holding of elections in cities where the position of mayor was vacant (which was done after Maïdan).

With the agreement of the new Ukrainian authorities, the monitoring of Ukraine was followed by what we call a “post-monitoring”. A delegation from the Congress made several visits in the country. They resulted, during a meeting in Kiev from 11 to 13 March 2015, in a roadmap for the implementation of the Congress recommendations, developed in cooperation with the Ukrainian authorities. This roadmap was signed by the Ukrainian government on 20 May 2015. Despite the difficult context due to the conflict in part of the eastern regions of the country, some of the recommendations of this post-monitoring have been implemented. Particularly with regard to better financing of local and regional authorities. In addition, the post-monitoring insisted on the swift adoption by Parliament of constitutional amendments relating to decentralisation. These amendments were adopted by the Parliament at their first reading and received the green light from the Constitutional Court. But to date I believe this has not been any further. The Orange Revolution government wanted to reform the constitution to deepen local and regional self-government, without succeeding. The regime of President Yanukovych had set up a Constituent Assembly with the same objective, without any more success. Will the reform attempt fail for the third time? I hope not. The slow pace in the implementation of the Minsk process to settle the conflict in Eastern Ukraine should not, in my view, block the adoption of a constitutional reform to deepen decentralisation in the rest of Ukraine.

Two major debates are taking place throughout Europe. The first concerns the financing of municipalities and the second is amalgamation.

**Without financial means, autonomy is only the autonomy to do nothing.** But municipalities should not only receive means, they must also be able to dispose of them freely, and decide in a sovereign manner the actions that they will undertake with these means. During the Congress monitoring visits, the most often observed violation refers to the Article 9, paragraph 7, of the Charter. It states that "As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction". The new Ukrainian authorities made meritorious efforts since Maïdan to increase the funding of local authorities. In an Oblast such as Kharkiv, these efforts have increased the regional budget by 33% in one year. Meanwhile, the municipalities in the Kharkiv region have seen their resources increased by 60%. These efforts must be pursued. The capacity of local and regional authorities in Ukraine remains much lower than in many European countries.

**Very small local entities** of a few hundred or even 2 or 3 thousand inhabitants **do not have a sufficient critical size to exercise broad powers.** Amalgamation is then necessary to enable them to have more decision-making power. There is very often a cultural resistance to amalgamation. This is the case in countries as diverse as Austria, Switzerland, France, Spain or Ukraine. In the first three countries mentioned above, it is the path of associations of municipalities or inter-municipal co-operation that is most often chosen .These structures are not always the most transparent. In Spain, it is the provinces (the Ukrainian equivalent of the Oblasts) which exercise the powers of the small municipalities and the role of the mayors of these municipalities is often limited to mainly organising village festivals! In Ukraine, the government encourages amalgamation by promising additional financial means to municipalities that choose to follow this path.

I am a strong advocate of local self-government. It is at the local level that citizen participation is the most evident. The principle of subsidiarity means that it is the level of power best able to assume a competence that should exercise it, and it is often the local level. **The application of the principle of subsidiarity strengthens the effectiveness of public action.** This principle is enshrined in the Charter.

Another reason why local self-government is essential is the fact that it allows direct contact between the elected official and the citizen. Elected officials can therefore really appreciate the realities to which their fellow citizens are confronted. **Democracy is not the verticality of power.** Such verticality of power always goes hand in hand with a technocracy which constitutes a screen between the elected official and the citizen. Democracy is the sharing of power. Local and regional autonomy leads to political majorities that are not identical at all levels of power and thus guarantee the proper functioning of democracy.

**A democracy is alive only if citizens are interested in public affairs.** We must combat the excessive indifference of our fellow citizens towards politics and encourage them to take an interest in public decision-making. It is at the local level that this objective is the easiest to achieve.

Public management is a triangle. A first side of the triangle is the citizens, a second one is the elected representatives who represent them, and a third is the civil servants who implement the policies required by the elected representatives in response to the demands and needs of their fellow citizens. Each of these three actors in the management of the City has a role to play and must do so taking into account the general interest.

What we are experiencing today, throughout Europe, is more than an economic, social and financial crisis. It is a mutation of society. In such a context, innovation and openness to change are essential.

Active citizenship joined with good governance, and first and foremost good governance at local level, are the best guarantees for this innovation and openness to change.

It is no coincidence that Poland and Ukraine had roughly the same level of economic development at the fall of the Soviet Union, and that since Poland developed strongly in contrast to Ukraine. And this is not only due to Poland's accession to the European Union. It is because at the fall of the Soviet Union, Poland chose a large local autonomy. More decentralisation can lead Ukraine towards better regional economic development. As the Congress pointed out in a resolution of 2013: "local and regional authorities are crucial stakeholders and actors in ensuring European economic revival, due to both their economic and social roles". Increasing investments in local and regional infrastructures and in local and regional budgets can only promote local competitiveness, encourage private sector investment and boost employment. I think that the Kharkiv region is a good example in this regard.

To conclude, I want to tell you that I believe in political commitment. Only this makes it possible to change things. It must be guided by general interest and must aim to meet the aspirations of our fellow citizens. Citizen participation and social dialogue are useful to know these aspirations and to involve all of us in their realisation. It is often at the local level that this participation and dialogue can most easily be implemented. Just as it is at the local level that elected representatives can see most concretely the results of their political action.

Alexis de Tocqueville wrote in "From Democracy in America": "A nation may establish a free government, but without municipal institutions it cannot have the spirit of liberty". By striving for true local autonomy throughout Europe, our ambition in the Council of Europe is that this spirit of freedom can everywhere blow on our continent.

It is not only for this spirit of freedom, for efficiency in management, for a power closer to the citizen that the reform and deepening of local self-government is essential in Ukraine. Moving from a vertical to a horizontal power is the guarantee for a country like yours that never again there will be a return to authoritarian regimes.

Thank you for your attention.