**Legal opinion on the election of Kyiv mayor and Kyiv City Council deputies.**

On February 25, 2014 the Verkhovna Rada of Ukraine has adopted the Resolution № 791-VII «On calling early elections of Kyiv Mayor and Kyiv City Rada deputies on May 25, 2014", by which were assigned early elections of Kyiv Mayor and Kyiv City Rada deputies on Sunday, May 25, 2014. These elections have taken place and there were elected Kyiv Mayor and Kyiv City Rada deputies.

However, there are questions regarding the term of office of Kyiv Mayor and Kyiv City Rada deputies and, consequently, the date of next elections. Thus, Deputy Mayor and Kyiv Rada Secretary Mr. Reznikov [stated](http://eveningkiev.com/article/21363), that the elections held in Kyiv on May 25, 2014 were not just scheduled, but took place late. Parliament needs to sort it out, and, when it will take decision on the appointment of local elections throughout the country, to identify subjects, where elections have been held in May, because besides Kyiv, there were about twenty such cities. According to Olexiy Reznikov, attempts to organize repeat elections in Kiev should be stopped. Also Olexiy Reznikov [in another interview](http://newsradio.com.ua/2015_04_09/Os-nn-h-vibor-v-u-Ki-v-buti-ne-povinno-ale-m-sto-do-nih-gotove-Rezn-kov-8625/) mentioned the decision of the Constitutional Court of Ukraine of 2009, concerning this situation and experience of early local elections in Kyiv in 2008 ().

It should be noted that according to Article 14 of the Law of Ukraine "On the Election of Deputies of the Verkhovna Rada of Autonomous Republic of Crimea, local councils and village, town and city mayors" repeat elections are appointed in the event of recognition of respective elections as failed, or in the event that the person is recognized as one who refuses an appointment he was elected, so, it is not correct to use the term "re-election" for future elections, as it was done in the article.

To understand the situation, it is necessary to get back to year 2006, when they were held scheduled elections of Kyiv City Rada deputies and Kyiv Mayor (March 26, 2006). Article 141 of the Constitution of Ukraine at a time of election provided that the Kyiv City Rada deputies were elected for 5 years, and Kyiv Mayor - for 4 years (it was not specified at which type of elections). As to the term the local elections should be held, then-Law of Ukraine "On the Election of Deputies of the Autonomous Republic of Crimea, local councils and village, town and city mayors", determined it as Sunday.

In 2008, the Verkhovna Rada of Ukraine appointed the early elections of Kyiv City Rada deputies and the Kiev Mayor for May 25, which took place. After these elections arose a question - for which term the relevant authorities are elected? Constitutional Court of Ukraine in its Case Decision № 13-rp / 2009 dated June 4, 2009, on the constitutional filing of Kyiv City Rada on the official interpretation of provisions of Parts 1 and 2 of Article 141 of the Constitution of Ukraine noted, that the provisions of the Parts 1 and 2 of Article 141 of the Constitution of Ukraine, setting out the terms on which the deputies of the village, city, district, regional councils or village, town, city mayor are elected, should mean that at election of these individuals at the elections, provided under the Constitution of Ukraine (both scheduled and early) - they are covered with five-year and four-year terms of office, correspondingly. That is, the term of office of Kyiv City Rada deputies expired in 2013, and of Kyiv Mayor - in 2012.

On September 30, 2010, the Constitutional Court of Ukraine adopted a decision in which it recognized as not corresponding to the Constitution of Ukraine (unconstitutional) the law of Ukraine "On Amendments to the Constitution of Ukraine" of December 8, 2004 N 2222-IV because of breach of constitutional procedure for its consideration and adoption. As a result - Article 141 of the Constitution of Ukraine returned to the wording that existed before its amending by the Law of Ukraine "On Amendments to the Constitution of Ukraine" of December 8, 2004 N 2222-IV. New-old wording assumed that local councils deputies are elected for 4 years, as village, town and city mayors (were equalized the terms of office for local governments).

In the same year (on October 31) were held local elections throughout the Ukraine. Elections were appointed by the Verkhovna Rada of Ukraine Resolution № 2412-VI «On the appointment of scheduled elections of deputies of local councils and village, town and city mayors in 2010", dated 1.07.2010. The text of the Resolution stated: "to appoint regular elections of deputies of local councils and village, town and city mayors on Sunday, October 31, 2010," but it was not mentioned that local elections were not held in Kyiv. At the same time, in view of the Decision of the Constitutional Court, referred to above, - elections in Kyiv were not actually carried out.

On 01.02.2011 were made amendments to Article 141 of the Constitution of Ukraine, which assumed:

Part 1 - term of office of village, town, city, district, regional Rada, which deputies were elected at scheduled election, is five years;

Part 2 - term of office of village, district, city mayor, elected at the scheduled elections is five years,

Part 3 - scheduled elections of village, city, district, regional councils, village, town and city mayors should be held on the last Sunday of October of the fifth year of the relevant council or the relevant mayor term of office, elected at the scheduled elections.

Also February 21, 2014 was adopted the Law of Ukraine "On the recovery of certain provisions of the Constitution of Ukraine," but it did not play a part in addressing this issue as the text of Article 141 of the Constitution of Ukraine remained unchanged.

Taking into account the above changes, we distinguish 3 groups of elected bodies:

**1) local councils and village, town and city mayors who were elected on 31.10.2010 and were not re-elected** - for them it is obvious that these bodies elections should be held on October 25, 2015;

**2) local councils and village, town and city mayors who were elected on 31.10.2010 and were later re-elected at early elections.**

Since the Constitution of Ukraine does not regulate the terms of office of the bodies, elected at early elections and, accordingly, the period of the election of such bodies, the Court in its Decision № 2-rp / 2013 dated 05.29.2013, applied broad interpretation of provisions of Part two of Article 136, Part three of Article 141 of the Constitution of Ukraine and stated that scheduled elections of the Verkhovna Rada deputies of the Autonomous Republic of Crimea, village, town, district, regional councils and village, town and city mayors, elected at regular or early elections take place simultaneously throughout Ukraine in the last week of October of the fifth year of the term of office of the councils or mayors, elected at the scheduled elections on October 31, 2010. Thus, if a body, elected at scheduled election on October 31, 2010, was re-elected later at early elections, the regular elections of this body should still be held on October 25, 2015.

**3) local councils and village, town and city mayors who were not elected on 31.10.2010 at regular elections.**

These include, among others, Kyiv City Rada and Kyiv Mayor. The latest regular local elections were held as far back as on March 26, 2006. This group is the most problematic. If apply to the elections of Kyiv Mayor and Kyiv City Rada deputies the above Part 3 of Article 141 of the Constitution of Ukraine, the regular local elections in Kyiv City would have to happen on October 31, 2010, i.e. before adoption of amendments to the Constitution of Ukraine on February 01, 2011, which is impossible.

In this case, it is clear that the Verkhovna Rada of Ukraine would have to take this into account and note in the transitional provisions of the Law of Ukraine "On Amendments to the Constitution of Ukraine on holding the regular elections of people's deputies of Ukraine, President of Ukraine, Verkhovna Rada of the Autonomous Republic of Crimea, local councils and village , town and city mayors "of 01.02.2011 what to do with the local elections of some elected bodies, including the Kyiv City Rada and Kyiv Mayor. However, this was not done.

Consequently, one may state that the term of regular local elections of Kyiv Mayor and Kyiv City Rada deputies was not defined due to a gap in the legislation.

At the same time it is not correct to refer to the Decision of the Constitutional Court of Ukraine of 2009 to solve this situation, as Mr. Reznikov did, because the CCU interpreted Article 141 of the Constitution of Ukraine in the wording of 2009, but since then this article has changed, in particular appeared Article 3, which determines the term of the next scheduled local elections. Early elections of Kyiv City Rada deputies and Kyiv Mayor were held under the new wording of Article 141 of the Constitution of Ukraine.

Recognizing the existence of the above problems, the Constitutional Court of Ukraine tried to solve it in the above mentioned Decision № 2-rp / 2013 of 29/05/2013. Insofar as the stated reasoning is concerned it mentioned the problem determining the terms of elections of Kyiv City Rada deputies, Ternopil Regional Rada deputies and Kiev Mayor. It also notes the importance of unification of terms of all regular elections that strengthens the foundations of a unitary form of government of Ukraine, unity and integrity of its territory. Further it is necessary to quote the resolutive part of Resolution № 2-рп / 2013:

"In terms of constitutional presentation of the provision of Part 2 of Article 136, Part 3 of Article 141 of the Constitution of Ukraine, the first paragraph of Article 14 of the Law of Ukraine "On the Election of Deputies of the Autonomous Republic of Crimea, local councils and village, town and city mayors "of July 10, 2010 № 2487-VI, it should be understood that the next, after entry into force of the Law of Ukraine "On Amendments to the Constitution of Ukraine on holding the next elections of people's deputies of Ukraine, President of Ukraine, Verkhovna Rada of the Autonomous Republic of Crimea, local councils and village, town and city mayors" of February 1, 2011 № 2952-VI, **all** scheduled elections of deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, village, city, district, regional councils and village, town and city mayors, elected at the scheduled or early elections, should be held simultaneously throughout the Ukraine in the last week of October of the fifth year of the term of office of councils or mayors, elected at the scheduled elections on October 31, 2010".

As you can see, the Constitutional Court of Ukraine took over the responsibility to determine that **ALL** (including the election of Kyiv City Rada deputies and Kyiv Mayor) next scheduled local elections should be held on the last Sunday of October of the fifth year of the terms of office of councils or mayors, elected at the scheduled elections on October 31, 2010, i.e. on October 10.2015.

Once again it is worth recalling Part 3 of Article 141 of the Constitution of Ukraine, which states that scheduled elections of village, city, district, regional councils, village, town and city mayors should be held on the last Sunday of October of the fifth year of the relevant council or the relevant mayor term of office, elected at the scheduled elections. It should be understood that local elections is a collection of many elections, among which, separately, elections of Kyiv City Rada deputies and Kyiv Mayor. The presence of the word "respective" in Part 3 of Article 141 of the Constitution of Ukraine means that for appointment of every next scheduled elections is required an individual approach to these elections. For Kyiv Mayor elections, Part 3 of Article 141 will be read as follows - the scheduled elections of Kiev Mayor are held on the last Sunday of October of the fifth year of the terms of office of Kiev Mayor, elected at the scheduled elections. As we remember, Kyiv Mayor was elected at the scheduled elections even as long as in 2006.

So, there are curtain reasons to criticize the decision of the Constitutional Court of Ukraine and state that he slightly exceeded his terms of office in interpreting Part 3 of Article 141 of the Constitution of Ukraine. However, it should be recalled, that at the same time the decision of the Constitutional Court of Ukraine is binding on the territory of Ukraine, is final and cannot be appealed, which is important when deciding on the terms of scheduled elections of Kyiv City Rada deputies and Kyiv Mayor .

It is also important to note the fundamental principles of elections. According to Article 25 of the International Covenant on Civil and Political Rights, every citizen must have, without any discrimination, mentioned in article 2, and without unreasonable restrictions the right and opportunity to vote and to be elected at genuine **periodic** elections, held on the basis of universal and equal right to vote by secret ballot, guaranteeing the free expression of the will of the voters. Periodicity principle is mentioned in the Code of Good Practice in Electoral Matters, adopted by the Venice Commission. Also, according to the Document of Copenhagen Meeting of the Conference on the Human Dimension of the CSCE of June 29, 1990, will of the people must be expressed through periodic and genuine elections and it is required to held elections at reasonable intervals, with reasonable frequency (subparagraph 5.1 of paragraph 5, paragraph 6, subparagraph 7.1 of paragraph 7). As you can see, the essence of periodicity principle is that the elections should take place at regular intervals. Thus the voter must understand how long is this interval, i.e. for how long he elects this or that particular body (the principle of legal certainty).

Before early local elections nobody informed voters that the Kyiv Mayor and Kyiv City Rada deputies are elected for 5 years. Position of the Constitutional Court on this matter was mentioned already and there was no other official explanation. Thus, it can be stated that voters elected deputies of Kyiv City Rada and Kyiv Mayor for a term until the next scheduled elections - October 25, 2015.

Therefore, in view of the above arguments, Scheduled elections of deputies of Kyiv City Rada and Kyiv Mayor should be held on October 25, 2015.