



PROMOTING LOCAL DEMOCRACY IN UKRAINE

The Congress  
Le Congrès



# STUDY ON THE **UKRAINIAN LAW** ON THE **STATUS OF LOCAL COUNCILLORS**

*Promoting local democracy in Ukraine*

Council of Europe

## Acknowledgments

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The study on the Ukrainian Law on the status of local councillors was prepared in view of the roundtable on the “Legislative regulation of the legal status of local councillors in Ukraine: state of play and prospects for improvement”, organised jointly by the Committee on State Building, Regional Policy and Local Self-Government of the Parliament of Ukraine and the Congress of Local and Regional Authorities of the Council of Europe on 18 December 2017 in Kyiv, Ukraine. Furthermore, the study has been updated to reflect the discussions held in the roundtable.

The study takes into consideration the local self-government and decentralisation reforms in Ukraine that enlarged the scope of roles and responsibilities of local councillors. It was developed by Nikolaos Hlepas, Member of the Group of Independent Experts on the European Charter of Local Self-Government, Colin Copus, Professor, and Alistair Jones, Associate Professor, at De Montfort University in Leicester, United Kingdom. The overall co-ordination was ensured by the Secretariat of the Congress.

The study was produced within the project “Promoting local democracy in Ukraine” and the Council of Europe Action Plan 2015 - 2017 for Ukraine. It builds on the project activities conducted with local elected representatives to support them in the implementation of democratic principles at local level in Ukraine.

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## **SUMMARY**

The study provides an analysis of the law for local councillors, addressing the following aspects: mandate and relations to citizens; ethics and accountability; rights and duties as individual mandate holders and members of the council; relation to local administration and to other public authorities; remuneration, conditions of office and careers; disqualifications, liabilities and termination of office.

Principles of free mandate and representative democracy seem to make necessary a review of the existing recall procedures, which make councillors particularly vulnerable to several pressures. Provisions on ethics, transparency and conflicts of interest should be systematised including guiding principles. Overregulation should nevertheless be avoided since the councils can introduce respective statutes, adopting provisions from European codes of conduct. Rights of councillors touching upon private rights, furthermore on institutional positioning of other public bodies should also be reviewed. Local councillors without executive posts do not hold personal, but collegial authority which should also define their relation to local administration officials. Disqualifications, liabilities, suspension and termination of office should be regulated in a systematic way, involving, where necessary, procedures guided by actors and bodies offering a sufficient level of impartiality and objective judgment.

## **INTRODUCTION: STATUS AND ROLES OF LOCAL COUNCILLORS**

In the traditional model of representative democracy, councillors are elected in order to represent citizens in their local authority and transform citizens' preferences into local policy. Therefore, a main task of the councillor is to ensure responsiveness to citizens' needs and demands. On the other hand, the councillor ensures public accountability of the executive and the administrative apparatus of local government through his/her controlling, scrutinising and voting powers. Therefore, councillors play an intermediary role between the citizenry and the local government, sometimes also in the opposite direction, namely publicising and explaining policies and decisions to citizens, in order to gain acceptance and support for the local authority, and therefore reinforcing citizens' trust in them. The role of councillors who are members of the ruling administration or of the opposition group will vary around this point.

Councillors have a double role as members of a collective political body and holders of a personal political mandate. As members of the main deliberative body, the council, councillors are initiating local debates and jointly elaborating local government strategies. As single politicians, some councillors also take executive offices in local authorities, becoming an integral part of municipal executive leadership endowed with additional powers and closer relations to professional administration.

Councillors perform several roles and tasks and their legal status has to be configured accordingly. At the same time, constitutional rights and principles as well as other public institutions and their powers have to be respected by the councillors. Therefore, the study will attempt to systematise the legal status of councillors, without necessarily following the structure of the Ukrainian Law under examination. The existing legislation will be reviewed in the light of principles and rules included in the European Charter of Local Self-Government (hereinafter "the Charter"),<sup>1</sup> its Additional Protocol on the right to participate in the affairs of a local authority<sup>2</sup> and other pertinent documents of the Congress of Local and Regional Authorities of the

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<sup>1</sup> *European Charter of Local Self-Government* (ETS No. 122), available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/122>

<sup>2</sup> *Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority* (CETS No. 207), available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/207>

Council of Europe (hereinafter “the Congress”), such as the report on the *Conditions of Office of Elected Representatives*<sup>3</sup> and especially the *European Code of Conduct for the political integrity of local and regional elected representatives*,<sup>4</sup> among others.<sup>5</sup> Furthermore, this study will refer to basic rules and principles of the Ukrainian constitutional order, including the constitutional status of local government, human rights and the division of powers, as well as pertinent experience in other European countries.

The following aspects are addressed in the study:

- The political mandate of local councillors and their relation to citizens (Art. 3 and 7.1 of the Charter)
- Ethics and accountability of local councillors
- The rights and duties of local councillors as individual mandate holders and members of the Council (Art. 3, 7.1 and 7.3 of the Charter)
- The relation of local councillors to local professional administration and to other public authorities (Art. 3.2 and 6 of the Charter).
- Remuneration, conditions of office and careers (including gender issues) of local councillors (Art. 7 of the Charter)
- Disqualifications, liabilities, suspension and termination of office (Art. 7 and 8 of the Charter)

## **I. THE POLITICAL MANDATE OF LOCAL COUNCILLORS AND THEIR RELATION TO CITIZENS**

1. The European Charter of Local Self-Government stipulates that local authorities manage and regulate a substantial share of public affairs “*under their own responsibility*” (Art. 3 para. 1). Furthermore, Art. 7 para. 1 of the Charter defines “*free exercise of their functions*” for locally elected representatives. Therefore, according to the Charter, local authorities and their bodies (or single members of bodies) are not acting as agents of local authorities, nor according to instructions coming from their voters. Local councillors should have a free mandate, since they decide under their own responsibility and exercise their functions *freely*. An imperative mandate for councillors would not be in conformity with these provisions of the Charter.
2. Art. 71 of the Ukrainian Constitution stipulates that elections to bodies of local self-government are free and held on the basis of universal, equal and direct suffrage, by secret ballot. According to Art. 141 of the Constitution, village or settlement or city councils are composed of councillors elected for a five-year term by residents on the basis of universal, equal and direct suffrage, by secret ballot.
3. Concerning the status of local councillors, Art. 30 of the Law on the Status of Local Councillors (LSLC) highlights the «*Inviolability of a Local Councillor’s Powers*» and the “*Provision of Conditions for the Exercise Thereof*” through the following:  
“1. A local councillor shall be vested with full powers stipulated by this and other laws of Ukraine. No one can restrict the powers of a local council otherwise than provided for by the Constitution (254k/96-VR) and laws of Ukraine.

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<sup>3</sup> Report of the Congress on the “Conditions of office of elected representatives”, CG/2015(29)15FINAL, of 22 October 2015, available at <https://rm.coe.int/168071a951>

<sup>4</sup> *European Code of Conduct for the political integrity of local and regional elected representatives*, available at <https://wcd.coe.int/ViewDoc.jsp?p=&Ref=20160617-European-code-of-conduct>

<sup>5</sup> Including the reports of the Council of Europe Steering Committee on Local and Regional Authorities (CDLR) on the *Status and working conditions of local and regional elected representatives* (study series “Local and Regional Authorities in Europe”, No. 46) and on *Liability of local elected representatives for acts or omissions in the course of their duties* (study series “Local and Regional Authorities in Europe”, No. 67).

2. *Local councils and their bodies shall provide necessary conditions for the efficient exercise by local councillors of their powers.*
3. *A council and its bodies shall facilitate the activities of local councillors through establishment of appropriate conditions [...].*
4. *A local councillor shall not be held liable for speaking at the meetings of a council or its bodies, except for liability for insult or defamation.*
5. *For the period of execution of councillor's powers, a local councillor shall be granted deferment from conscription to military or alternative (non-military) service [...].*
6. *Local executive authorities, local self-government authorities and their officials, heads of enterprises, institutions and organisations, irrespective of the patterns of ownership, shall facilitate the exercise of councillor's powers by local councillors".*

4. In view of the aforementioned rules and principles, it is recommended to abolish or thoroughly review provisions of the Law on the Status of Local Councillors (LSLC) about the recall "at any time" of a local councillor who has "betrayed the voters' trust" (Art. 10 para. 2). Furthermore, an elected representative should act for the interests of the community he/she governs upon and not exclusively in the interests of those who voted for her/him. A councillor should not be bound by any imperative mandate. Art. 38 LSLC also sets that a local councillor may be recalled by voters and Art. 37, para. 3, evokes the "*discrepancy between a local councillor's practical activities and the key principles and provisions of his election programme....*" as grounds for recalling a local councillor on popular initiative. Once more, a legal provision seems to imply an imperative mandate that is not in accordance with the Charter.
5. Furthermore, the procedure described in Art. 38 about the recall of a local councillor on popular initiative raises serious concerns: A certain number of persons (400 in the biggest cities, 300 in cities of oblast significance) can adopt a resolution to submit a proposal for recall and this proposal (with additional signatures to be collected according to Art. 40) is delivered to the relevant territorial election commission (Art. 41). If the councillor was elected through self-nomination, this commission can adopt a resolution for his/her recall and if he/she was elected through party nomination, the commission appeals to the highest governing body of the respective party. This body, in accordance with the party rules, can adopt a resolution to recall this councillor on popular initiative. On the basis of its or of the party resolution the respective territorial election commission can recognise as elected the next candidate for councillor or call interim elections in the respective single-seat constituency.
6. According to this recall procedure, the initiative of a rather limited number of citizens can lead to premature end of the term of office for elected councillors who have not necessarily broken the law but have been considered to "*betray trust*" or to adopt practices contrary to "*principles and provisions of his/her election program*". These very vague notions offer wide possibilities of misuse and/or arbitrary interpretations. This recall procedure obviously violates the principles of free mandate and representative democracy. Furthermore, there are no procedural or substantial guarantees (only minimum numbers of initiators, etc.) about the percentage of voters participating in the recall procedure; there is an obvious violation of voting rights and the principle of equal vote.
7. In practice, this recall procedure means that elected councillors can lose their mandate through a well-organised initiative of competitors, opponents or simply unsatisfied (for whatever reason) citizens in any time. This makes councillors extremely vulnerable to pressures and threats that can deprive them of the necessary institutional safeguards for independent and impartial judgment and decision-making which is particularly important for the members of a collective, deliberative and decision-making body as the city council. Furthermore, easily conducted, successive recalls of councillors could destabilise city councils and city governance.

8. If a recall procedure is considered to be necessary, the law should introduce limitations, additional conditions and criteria.. For instance, it should be impossible to recall the councillor during the first year and the last year of his/her term of office (instead of the existing possibility "at any time"). The provision about the "*discrepancy with [...] election programme*" in Art. 37 para. 3 should be removed since circumstances can change. Reasons of recall can be enumerated in a national or/and local codes of conduct for local councillors. An initiative for recall should have the signatures of no less than the total number of votes in the last election divided by the total number of council seats. A decision on recall should belong to an independent territorial electoral commission and not to party bodies in any case.
9. Concerning the relationships between local councillors and voters, Art. 16 provides for "*Reporting before and meeting with voters by a local councillor*"; Art. 17 sets the "*voters' demands*". The relationships between voters and elected representatives should not be regulated according to fixed standards. The practice of democracy requires initiatives on the side of citizens in their capacity as voters and on the councillors in their capacity as elected representatives. Such initiatives should be encouraged but not imposed by law. It is therefore suggested to delete both Arts. 16 and 17.
10. Problems could emerge where party lists are used instead of preference voting in elections, and councillors are then assigned to 'represent' a particular area. This leaves the potential for a lack of engagement between voters and councillors, with councillors not necessarily being aware of "*voters' demands*". In the Netherlands, aspects of this potential disconnection are mitigated through local political parties, rather than national political parties, standing for election in council-wide lists. These local parties are at least aware of "*voters' demands*" and have the capacity to respond.
11. Councillors' accountability to citizens and communities can operate through a number of means, especially when taken alongside deliberative and participative mechanisms and these can be used to enhance accountability and increase trust in elected representatives. Councils have long employed various ways of engaging the public in decisions or debate about policy. Participatory budgeting, for instance, is a powerful, neighbourhood tool for engaging citizens in the budgetary process and enhancing accountability.
12. Citizens' juries, surveys, panels of citizens, open meetings, local forums, and neighbourhood meetings have all been used as a way of ensuring citizens can influence decisions taken by councillors. Also the use of social media to engage citizens and to gauge their opinions provides councillors with an immediate link to citizens and an additional way to provide information and alternative views. However, the final decision rests with councillors.
13. Through the processes and mechanisms of citizen engagement, councillors are open to question, challenge and critique. Further, citizens can also seek justification and explanation for the actions councillors have taken, or not taken. Any setting where councillors have to face public questioning enhances accountability. The Law on the Status of Local Councillors has little to say about requiring councillors to employ wider mechanisms of citizen engagement as a means of enhancing accountability and could be strengthened in this regard. By requiring councillors to use and respond to broader participative mechanisms, citizens would be provided with a means of signalling their views to councillors in between local elections. Such requirement to consult and respond may lessen the need for voters to employ recall mechanisms.

## II. ACCOUNTABILITY AND ETHICS OF LOCAL COUNCILLORS

14. The constitutional status of local government says much about the nature of councillor accountability and the ethical framework within which councillors operate. It is important to acknowledge the right of local government to exist and for that right to be enshrined in the constitution as is the case for Ukraine. Local self-government means little if the size, shape or very existence of local government can be easily changed by the centre or if central government can, unhindered, alter the functions, tasks, responsibilities and powers of local government and what councillors can and cannot do.
15. Should a council, of any form, act beyond its powers (*ultra vires*, or in violation of the Constitution of Ukraine), their powers will be terminated, which may be carried out through a local referendum. Alternatively, the Verkhovna Rada of Ukraine may call special elections (Art. 78), which must be done within ninety days of the termination of powers.
16. Art. 2 of the Law of Ukraine on the Status of Local Councillors displays how the councillor represents a local territorial interest and stresses that under the Constitution of Ukraine and the Law on Local Elections, councillors are elected by universal, equal and direct suffrage and through a secret ballot. That position within the Law is a powerful statement of democratic electoral accountability. The local councillor's electoral legitimacy and accountability to citizens fulfils the robust and necessary criteria of a modern democratic state when it comes to local elections. There is, however, a concern about the extent to which an individual councillor may have such electoral legitimacy when elected using a party list system.
17. When it comes to councillor accountability to citizens and communities, in any democratic system there is a direct link between councillors and the voters within local communities where voters are able to elect their councillors, using different electoral systems. Electoral accountability sustains the link between councillors and citizens and grants councillors legitimacy to act. Local elections provide a link between the council, councillors and the citizen and it provide councillors with legitimacy to conduct two tasks vital to local democracy: first, transferring the views of citizens into the council; and, second, working as an elected representative to hold the council machinery to account.
18. If local policy making is to be a deliberative process where debate takes place in public, a proportional electoral system would strengthen local government and link councillors to citizens more firmly. On the other hand, councillors' accountability to a political party or even a sponsor of that party means that within a system controlled by national parties, councillors would see their loyalty and accountability to the party not to the voters. Another dimension to accountability flows from how many councillors represent electoral sub-divisions. If a councillor is elected as an individual - be it in a single-member or part of a multi-member ward or division - it is possible for the public to remove that councillor at a subsequent election. If the electoral system uses some form of party list, whereby a political party can prioritise a given candidate, it is far more difficult for the voting public to remove that specific councillor. It becomes even more complicated to remove a councillor if the list system covers the entire council as a single list. If there is demand for individual councillors to be held accountable for their actions, a party list system is not the most appropriate form of electoral system to be utilised.
19. Holding a councillor to electoral account becomes even more difficult if a councillor is co-opted on to a council because of a lack of candidates standing for election. Using the United Kingdom as a comparator, at the parish or town council level, many councillors are either elected unopposed or are co-opted on to such a council. A possible recommendation is for smaller councils to utilise single-member wards or divisions, utilising whatever electoral system may be deemed appropriate.



Larger councils would be recommended to use multi-member wards. The important caveat here is for voters to be able to cast their ballot for individual candidate(s) rather than a block party list. Such an approach may bring that need for electoral accountability to the fore.

20. An additional dimension to the accountability of councillors to their citizens arises for Ukraine under the Law on the Status of Local Councillors (LSLC) which is very clear on the question of recall of councillors. Indeed, chapter one, article 10 stresses that: '*A local councillor who has betrayed the voters' trust may be recalled at any time*'. Recall can be a way to ensure that citizens are able to hold councillors to account in the period between local elections and do not therefore have to wait until the next local election to remove a councillor from office, for appropriate and stated reasons, but this procedure should be organised in a way that safeguards principles of equal vote and free mandate (see above). Providing citizens with such a power is not commonplace across Europe but neither is it unique to Ukraine. In federal systems, such as Germany some states (or Lander in the German case) have regulations for recall, while others do not; Switzerland, the United States and Canada, for example, have recall provisions.
21. Art. 37 (2) LSLC provides a reason for recall as follows: absence by a local councillor at more than half of council plenary sessions or standing committee meetings during one year. While no recall of councillors exists at all in the United Kingdom, if a councillor misses all meetings within a six-month period then the seat automatically becomes vacant unless the full council have previously resolved to accept the councillor's continued absence. The citizens however, cannot remove a councillor from office for lack of attendance at meetings. The possibility of recalling councillors should be assessed with a great deal of caution, as have been noted in Chapter I, paragraphs 6 and 7 of this document, since there is the potential to undermine councillors by engineering opposition against them.
22. Art. 8 LSLC which concerns ethical standards and the sub-sections within provide a framework within which councillors can ensure appropriate ethical and legal standards of behaviour. The core of the framework are the provisions which require councillors not to use their office for personal or pecuniary gain, to behave in certain ways that maintain the dignity and status of the office of councillor, not to disclose confidential information, and not to bring the council into disrepute by unethical or generally bad behaviour. Such principles are the foundation of a sound ethical framework. Yet, Art. 8 lacks a clear, concise and broad statement of the guiding principles that underpin the expected standards of behaviour from councillors
23. Ethics and developing, maintaining and promoting agreed and approved standards of behaviour are about avoiding poor behaviour that undermines the office of a councillor and which brings the office into disrepute. However, what constitutes poor behaviour is very much open to interpretation. When considering the appropriate code of conduct of behaviour for councillors a number of issues arise. Firstly, there should be a clear expectation that such a code applies to all councillors, be they elected to a village or to the city council of Kiev. Codes of conduct and ethical practices should not vary in the expectations they place on councillors because councillors are located in different settings. Secondly, there is the issue of the content of any code of conduct. Thirdly, there is the question of the extent to which such a code of conduct is formalised: is it written down in statute or is it more informal? Fourth, is whether codes of conduct should be controlled and set nationally or be set and monitored locally?
24. The UK has developed a broad set of principles<sup>6</sup> for standards of behaviour which applies to anyone holding a position in public life. The code is a benchmark of minimum standards of behaviour which is expected of any such post-holder. The Committee on Standards in Public Life was established in

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<sup>6</sup> "The 7 principles of public life", Committee on Standards in Public Life, Government of the UK, 31 May 1995, available at <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life-2>

1994 to advise the prime minister on ethical behaviour across all public life. There are seven principles:

- i. Selflessness - Holders of office should act solely in the public interest.
- ii. Integrity - Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- iii. Objectivity - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- iv. Accountability - Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure accountability
- v. Openness - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- vi. Honesty - Holders of public office should be truthful.
- vii. Leadership - Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

25. While these standards may appear rather vague, they set out what is expected of any holder of public office. The issue comes with regard to the enforcement of these principles. The Committee on Standards in Public Life can carry out investigations into any aspects of public life and is currently planning a review of ethical standards and procedures in English local government to take place in 2018. However, there is no statutory requirement for its recommendations to be enacted.

26. More generally, ethical standards are linked to the culture of an individual organisation or to local government as a whole and to accepted societal norms and patterns of behaviour. In politics factors such as openness, transparency and responsiveness to citizens' concerns, underpin ethical behaviour. But, those accepted norms may need to be reinforced through codification. When examining the ethical behaviour of councillors in Ukraine, the concept of a committee on "Standards in Public Life" may be a useful starting point. If adopting such an approach, or any equivalent, the question arises as to the extent to which such a committee which polices standards in public life has the powers needed to enforce its decisions.

27. An important issue to resolve is whether or not ethical standards of councillors should be monitored nationally and/or locally, or monitored at both national and local level. England has experienced both national and localised control of ethical standards among councillors. The Local Government Act of 2000 created a National Standards Board for England. The Board was responsible for ensuring ethical standards in local government and oversaw a national code of conduct which applied to all councillors. The Board was responsible for conducting investigations into the conduct of councillors or referring them to the adjudication panel for England or to a council's own standards committee. Under the Act all councils had to form standards committees which had external, independent members, to investigate complaints against councillors (since 2012 such committees are no longer legally compulsory). Standards committees could suspend councillors from their councils for up to six months. The Adjudication Panel could disqualify councillors for up to five years.

28. The standards regime introduced by the UK's Local Government Act of 2000 was heavily criticised as being excessively complicated, involving a great deal of administrative detail, secretive and often basing its decisions on a lack of understanding of the processes of local politics. Indeed, councillors could be reported to the Standards Board as a way of stopping them from pursuing a legitimate line of argument, or from investigating a policy or decision, or from even displaying the robust

argumentative behaviour normal for political exchange. Indeed, the standards regime was often used to simply shut up councillors.

29. The Localism Act 2011 abolished the Standards Board and placed the production of local codes of conduct and for investigating breaches of those codes, with individual councils. Those local codes were to be based on the seven 'Nolan principles' set out above in para. 24 and also must specify the sanctions that can be enacted against councillors should they break the code. The current standard regime is therefore localised not nationalised. In designing any standards regime there has to be:

- clear objectives
- guiding set of principles
- a coherent framework
- clarity for councillors about the behaviour that is expected of them
- a well-defined set of sanctions
- appeal mechanisms
- recognition of the realities of local politics

30. It is the last point - recognition of the realities of local politics – that is vital in producing a code that cannot be used to simply prevent councillors from robust criticism of their councillor colleagues or council officers. If councillors and members of ruling parties in particular, are given a mechanism by which they can prevent opposition councillors from challenging what they are doing, the chances are they will use it. Take for example the issue of bullying – there is a distinction between persistent bad behaviour that is designed to intimidate others and the simple robust exchange of views, which may become quite heated on occasions.

31. Codes of conduct can be used, wrongly, to silence councillors or to punish them for emotional or angry outbursts which may be a part and parcel of local political exchanges. Equally, codes of conduct get into dangerous territory if they are designed, or used, to restrict free speech, make certain language or words inadmissible and therefore punish councillors who may use such language during heated exchanges or who are trying to make valid political and policy points with which others might disagree. In trying to protect minority groups, for example, if codes of conduct are too prescriptive and narrowly drawn they can be used to prevent justifiable questions or criticisms or simply to close down inconvenient debate. Above all codes must recognise that councillors are elected officials with a mandate to speak and express their views – whatever anyone listening to those views may think.

32. Legal provisions on ethics should include a clear, concise and broad statement of the guiding principles that underpin the expected standards of behaviour from councillors. Codes of conduct work best where they are clear and concise statements of principle and of the expectations of what is appropriate behaviour for councillors and where they contain clear disciplinary mechanisms and sanctions for breaches of the code.

### **III. THE RIGHTS AND DUTIES OF LOCAL COUNCILLORS AS INDIVIDUAL MANDATE HOLDERS AND MEMBERS OF THE COUNCIL**

33. LSLC includes various provisions introducing a plethora of different rights of local councillors which raise serious concerns about the efficiency of such provisions, about the protection of private rights, the distinction of roles among various public institutions, the avoidance of overlapping actions and responsibilities and the creation, in general, of confusion and a uncoordinated cacophony in local governance. There is also an obvious trend to overregulation, also concerning the *duties of*

councillors when, for instance in Art. 10 para. 3 it is defined that each single councillor should “*inform at least semi-annually, voters*”, while in para. 5 it is also provided that the councillor should announce hours and venues for receiving voters or other citizens “*at least once a month*” and in Art. 16 that there should be a *periodic Reporting* of each local councillor on his/her work “*before voters of the respective constituency, associations of citizens*” at least *once a year*. A report by a local councillor should contain information on his/her activities and work. He/she should inform the council and its executive bodies of the outcome of the discussion on his/her report, comments and proposals addressed by voters as well as their demands. These reports should also “*be covered by the media*” (Art. 16 para. 8). There are doubts, whether these quite ambitious legal provisions, referring to each single local councillor, are really feasible in practice. Furthermore, the political work of each councillor and his/her meetings with voters and others should rather be a matter of his/her own concern (or of party/factions’ statutes) and not a subject of detailed formal legal provisions who raise the question about compliance and create corresponding needs for control and sanctions. Over-regulation and central control signal distrust of councillors and of their actions and services to hinder and constrain them when it comes to dealing with complex local problems and issues. The temptation to over-regulate should be resisted and a light-touch taken to this issue.

34. In several European countries, access of single councillors to municipal and other public services is regulated by law. In France, Germany and Finland, councillors have information rights for subjects of deliberation in the Council (France) and matters directly related to their tasks (Germany, Finland). Concerning the rights of councillors, LSLC includes Art. 14 on the “*The right of local councillors to be received without delay and to be provided with necessary information.... on matters of councillors activity...*”, not only by state and local government officials, but also by “*heads of enterprises, institutions and organisations, irrespective of the patterns of ownership, which are located within the respective council’s territory*”. These persons, “*in response to a local councillor’s appeal shall provide him with reference materials or other information required for the exercise of councillor’s powers*”. Such an authority/power should be applied only to administrative structures in charge of implementing local governments’ acts, maybe to other public entities (if no major or special public concern, protected by law is violated), but not to private enterprises or private persons who exercise their constitutional and other rights and are subject to control by other judicial or administrative bodies according to other laws. Councillors could be able to claim information rights on behalf of the citizens when these rights are recognised by a specific law, concerning, for instance, access to environmental information.
35. Similar considerations could be made on Art. 15 about the “*Right of a Local Councillor to Demand Remedy of Violation of Law*”, upon “*detection of violations of citizens’ rights and legitimate interests or other violations of law*”. In this way, a single councillor seems to fulfil functions of a legal assistant or even of law enforcement and regulatory authorities, public defenders of citizens’ rights, ombudspersons, etc., creating problems of overlapping and a kind of “*institutional confusion*”, cross-cutting limits of competence and jurisdiction and finally in spite of the fact that there can be no guarantees about the impartiality of a councillor in a given case of private or private/public conflict.
36. The Councillor’s Appeal (Art. 13 LSLC) gives him/her the right to submit a written request to any authority, but also to private enterprises and organisations located within the council’s territory with a demand to solve any issues or provide official clarifications on the matters within their competence of any such authority. The Recipients of such a Councillor’s Appeal must consider the relevant issue within 10 days and respond to the councillor, and if that requires additional review or verification, such response must be provided within one month. A councillor may directly take part in the consideration of his/her appeal (Art. 13, para. 4). If he/she is not satisfied with the results of consideration of his/her appeal, or where the recipients avoided addressing, within the stipulated period, the issue raised in the appeal, he/she shall be entitled to submit a councillor’s inquiry (Art. 22 LSLC, see below). Also concerning Art. 13, there are, once more, serious concerns about the violation of private rights and overlapping with other public authorities.

37. A councillor's *Inquiry* is a written or verbal demand of a local councillor or of a group of councillors supported by the council and submitted to bodies of the local authority council, heads of enterprises, institutions and organisations of any type of ownership that are located or registered in the relevant territory. If such an inquiry is submitted by a councillor of a city (city of oblast significance), rayon or oblast council, it may also be submitted to the head and deputy head of the local state administration, heads of departments and divisions responsible for the matters that belong to the council's scope of competence (Art. 21). Regarding the addressees of such an inquiry, serious concerns emerge, once more, about the protection of private rights and the risk of inappropriate interventions in other public authorities. Therefore, such inquiries should, in principle, be limited to the respective local authority and its' bodies and officials
38. Concerning the procedure of such an inquiry, the Law stipulates that a body or an official enquired by a councillor shall provide, within the term established by a council, an official written response to the respective council and local councillor (Art. 22 para. 3). Where necessary, the response to the inquiry is considered at the council's plenary meeting (Art. 22.4) and a discussion is held if considered necessary by at least one quarter of attending councillors. Upon consideration of the response to the inquiry, the council shall adopt an appropriate resolution (Art. 22.5). After the adoption of a resolution in respect of such an inquiry, the council may also oblige the relevant body to submit a respective implementation report within the established time frame (Art. 22 par 3).
39. Art. 24 LSLC introduces the right of the councillor to "*raise with the council or its bodies the issue of conducting inspections, on the matters referred to the competence of the respective council, of activities of enterprises, institutions and organisations located in its territory, irrespective of the patterns of ownership*". He/she is entitled to make proposals concerning elimination of deficiencies detected through such an *inspection* according to Art. 24 and raise the matter of calling to account the persons through whose fault a violation occurred. Furthermore, upon a council's demands, a local councillor shall participate in monitoring over the implementation of the council's respective resolutions (Art. 24 para. 4). Also in the case of inspections, private rights and competence of other public institutions should be protected and the corresponding provisions in Art. 24 should be deleted.
40. Another individual right of each local councillor is the right to participate, with *deliberative vote*, in meetings of other local councils and their bodies. Respective provisions are found both in Art. 11 (para. 1. 2) and Art. 29 of the Law. The set up does not comply with the principles of democratic representation according to which elected representatives (i.e. local councillors) shall exercise their duties in their constituency and for the population who elects them. However, local councillors could be given the possibility to participate in meetings of other local councils *without deliberative vote* when issues of joint interest for both local authorities are discussed.
41. Similar attention should be given to Art. 19 para.1 which sets forth "*A local councillor who is not a member of a council's respective body may participate in its work with deliberative vote*". The participation of a councillor with deliberative vote in a Committee to which he/she does not belong would unbalance the composition of the Committee and is therefore not recommended.
42. According to Art. 19 para. 2.8, a single local councillor can "*raise the matter of no confidence in a village, settlement, or city mayor, dissolution of the bodies established by the council and dismissal of local self-government officials*". It would, however, be recommended to define a minimum number of councillors (not a single councillor) who can raise these matters, in order to safeguard a certain level of governability and stability in local authorities. Furthermore, dismissal of local officials should be subject to procedural and substantial guarantees and preconditions in order to avoid political and partisan pressure over officials. Therefore, a self-government official should not be exposed to such an initiative of a single councillor.

43. Concerning *groups and factions* of councillors, Art. 25 para. 1 stipulates that councillors “*may unite in councillors’ groups for the purpose of collaboration in the exercise of councillors’ powers in constituencies*”. Furthermore, para. 2 of the same article states that “*local Councillors shall unite in councillors’ groups on the basis of common territory between constituencies*”. However, these norms do not seem to be clear on the type of constituency organisation and encourage confusion. Councillors’ groups may be established for a definite period, but not exceeding the term of powers of relevant councils (para. 4). Provided that physical persons have the right to freedom of association, it is suggested to delete this article in order to avoid confusion and misunderstanding.
44. According to Art. 27, “*councillors’ factions in local councils shall be established, on a party basis, by local councillors (except for village, settlement councillors)*”. According to Art. 28, councillors’ groups and factions are entitled, inter alia: to proportional representation in a council’s standing and interim committees; to hold preliminary discussions on candidates for the position of officials to be elected, appointed, or approved by a council; to a speech by its representative at a council plenary meeting on each item on the agenda of such council session. As already mentioned, some of the rights introduced for single councillors should be rather recognised as rights of groups or factions or eventually even of corresponding minimum numbers of councillors.

#### **IV. THE RELATION OF COUNCILLORS TO LOCAL ADMINISTRATION AND TO OTHER PUBLIC AUTHORITIES**

45. As already mentioned, the Law offers to local councillors various possibilities to supervise and control the administration, through the following councillors’ rights:
- *Question* (Art. 21 LSLC): he/she can “*obtain information or clarifications on any particular issue*”
  - *Reception* (Art. 14): the councillor can demand to be “*received without delay and to be provided with necessary information*”
  - *Demand for “remedy of violation of law”* (Art. 15): officials of local government can be held administratively (or even criminally) accountable if they fail “*to take appropriate steps*”
  - *Appeal* (Art. 13 LSLC): submitting a written request to any authority located within the council’s territory to solve any issues or provide official clarifications.
  - *Inquiry* (Art. 21, 22 LSLC): a written or verbal demand supported by the council and submitted to bodies of the local authority. An official written response should be provided and an appropriate resolution of Council can be issued (22.5). The relevant body can be obliged to submit a respective implementation report thereof.
  - *raise the matter of dismissal* of local self-government officials (19 para. 2.8).
46. After Art. 29-1 was added to the Law in 2005, local councillors can officially have up to five “*Assistant Advisors*” working on a pro bono basis. These advisors provide secretarial, administrative, technical and research support. In view of the various tasks and multiple roles that a councillor must fulfil according to the law, it seems obvious that he/she needs assistance. The councillors can delegate some minor tasks to these assistants but certainly not their voting and speaking rights in the council, its committees, boards and bodies, since these duties have a personal character and cannot be detached from the political mandate and the political responsibility of each councillor (council regulations introducing such delegation possibilities should be considered as void). Attention should also be paid to the fact that, since councillors have several rights and powers (see above) over the local administration, problems could arise if assistants intrude in the daily work of the professional administration, tend to politicise administrative issues, etc. Therefore, clear rules of conduct should be adopted for councillors’ assistant advisors which could be included in regulations and codes of conduct addressed to councillors. Finally, another point of concern is the respect for Art. 38 of the Ukrainian Constitution, providing that citizens have *equal right of access to service in*

*bodies of local government.* The term “service” in Art. 38 can be interpreted as *professional* and paid service (or service positions), therefore causing no problems to the engagement of unpaid and pro bono work of assistants. However, it should be clear that previous experience as assistant of local councillors (chosen on grounds of personal trust and affiliation, not on merits after competitive call), should not offer additional possibilities of access to service in bodies of local government since this would be a violation of Art. 38 para. 2 of the Ukrainian Constitution.

47. It has to be underlined, as a matter of principle, that local councillors without executive posts do not hold personal, but collegial authority as members of a collective body, the local council. Moreover, local staff should be protected against abuse and undue pressure from individual councillors. In several countries which did not make a distinction between the authority of the Council as collegiate body and the individual authority of councillors as representatives, instances of abuse of authority by councillors have been signalled. Councils can convene appointed officials and ask questions and the administration should be obliged to provide such information. Individual councillors should be entitled to be provided with the information needed in order to accomplish their deliberative tasks but they should in no way be or be seen as hierarchical superior to local staff (except, of course, for councillors with executive functions and in the limits of their mandates). Therefore, provisions about the right of single councillors to *raise the matter of dismissal* of local self-government officials (Art. 19 para. 2.8) should be deleted. Relations of councillors with local government staff should follow principles and rules introduced in Recommendation 60 (1999) on political integrity of local and regional elected representatives<sup>7</sup> with the corresponding provisions of the European Code of Conduct for the political integrity (Annex to this recommendation of the Congress of Local and Regional Authorities) of local and regional elected representatives (Art. 20-22 of the code for the relations to local government staff). Council regulations could incorporate this Code or simply refer to it.

## **V. REMUNERATION, CONDITIONS OF OFFICE AND CAREERS**

48. Following basic principles included in the *Report of the Steering Committee on Local and Regional Democracy (CDLR)* on the Status and working conditions of local and regional elected representatives, it is possible to differentiate the conditions of office of those elected local authority members who have special functions or responsibilities (usually the members of the executive, but sometimes, depending on the country, committee chairmen or leaders of a political faction) and the conditions of office of those who have no such responsibilities and are merely members of the assembly and of committees.
49. A distinction can be drawn between three degrees of commitment:
- Elective duties considered as a full-time responsibility (engagement in another occupational activity at the same time is barely possible).
  - Duties considered as a part-time responsibility (40%, half time, etc.).
  - Political duties which constitute an ancillary activity (not generally affecting the main occupational activity). The elected representative can keep a full-time job.

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<sup>7</sup> Adopted by the Congress of Local and Regional Authorities on 17 June 1999 (see doc. CG (6) 8, Rapporteur Viorel Coifan, Romania) available at <https://rm.coe.int/168071a0f>. See also Outline report for the Revision of the Code of Conduct for the political integrity of local and regional elected representatives (Rapporteur: Manuela BORA, Italy (R, SOC), available at <https://rm.coe.int/revision-of-the-code-of-conduct-for-the-political-integrity-of-local-a/16807160fb>

Of course, the distinction between these three categories does not reflect the practice in all countries: Some consider that any elective office, even if it involves only a few hours' work a month, is a part time job. In many countries full-time engagement is often implied only for Members of Parliaments, since engagements are usually not so demanding for local councillors. While a mayor (and in some cases one or several deputy mayors) can possibly be considered as a full-time responsibility, a substantial proportion of the local elected councillors hold part-time responsibilities or their political duties constitute an ancillary activity.

50. In Ukraine, Art. 6 LSLC seems to follow a similar pattern: According to para. 2, *"A local councillor elected to the position of a secretary of a village, settlement, city council, a mayor or a deputy mayor of a rayon, oblast, city rayon council shall work at the respective council on a permanent basis and may not combine his official functions with any other work..., perform entrepreneurial activities or obtain profit from it, unless otherwise provided by law"*. Para. 3 states, *"Under a resolution of an oblast, Kyiv or Sevastopol city councils, a councillor elected to the position of a chairperson of a budget standing committee may work at such council on a permanent basis"*. For the rest of the councillors, para. 1 stipulates that *"a local councillor shall exercise his powers without discontinuing his entrepreneurial or official activities"*.
51. Art. 7 LSLC defines cases of incompatibility of the status of a local councillor with positions and activities: According to para. 1, a *"local councillor occupying the position of a head of a local executive authority or other position that is subject to the requirements of the Constitution (254k/96-VR) and laws of Ukraine regarding the restrictions on dual position-holding"* may not combine this official activity with the position of a village, settlement, or city mayor secretary of a village, settlement, or city council, mayor or deputy mayor of a city-rayon, rayon, oblast council, as well as *with other work on a permanent basis* in councils, their executive bodies or offices. Furthermore, according to para. 3, a *"local councillor may not hold another representative mandate"*. These provisions are in accordance with the spirit of Resolution 60/1999 and Art. 11 of the aforementioned Code of Conduct, furthermore with expressed opinion and suggestion of CDLR, stressing that *"simultaneous holding of more than two direct elective offices at different levels is not desirable...and should not, in principle be practiced"*. On the other hand, it should be considered whether incompatibilities should be introduced for public servants in central government who perform supervisory tasks concerned directly with local government administration, and for persons employed by the municipality or by a corporate entity or foundation under the control of the municipality who are in a senior position within the professional administration. These persons should also not be eligible for election as local councillors unless this employment relationship ends before the local councillors' term begins. Moreover, several interlocutors raised the issue of councillors holding executive offices in public or mixed ownership enterprises who would *"neglect their duties as councillors"*; however, this should be the subject of disciplinary powers of the Council Chair and of legal provisions about serious neglect of duties and not a reason for establishing additional incompatibilities, since councillors are not necessarily full-time politicians.
52. Under-representation of women is a common feature in nearly all European countries. Measures to encourage women to stand would therefore seem warranted for the purpose of ensuring a fairer representation of both sexes on elected local bodies. The role should, in particular, be carried out by the political parties, according to pertinent CDLR opinion. However, it should be considered whether women quotas<sup>8</sup> for councils and especially for executive posts could be introduced by the law.
53. According to Art. 7 of the Charter, conditions of office of local elected representatives shall allow *"for appropriate financial compensation"* as well as, where appropriate, for *"compensation for loss of*

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<sup>8</sup> v. "Women's political participation and representation at local and regional levels"; Document CG31 (2016)09final, rapporteur: Inger LINGE, Sweden (L, EPP/CCE), available at <https://rm.coe.int/168071a27c>



*earnings or remuneration for work done and corresponding social protection*". Art. 32 para. 2 LSLC stipulates that "...in the event of exercise of councillor's powers during working hours, a local councillor shall be reimbursed ...the average salary and other expenses...". Art. 33 para. 1 provides that "...in the event of a local councillor's election to an elected position in a council, in which he works on a permanent basis, an employment contract with him at the previous place of work shall be suspended ... A fixed-term employment contract shall be executed with an employee hired for a job (position) previously performed (occupied) by a local councillor; this contract shall be terminated in the event of such local councillor's return to work". Concerning simple participation in sessions and meetings, each councillor is exempted "from discharge of production or official duties" (Art. 32 para. 1).

54. The aforementioned provisions seem to be in accordance with article 7 of the Charter. There is also a general rule in para. 2 of Art. 7 that "a local councillor may not use his councillor's mandate for purposes not associated with a councillor's activity", however, the issues of *declaration and conflict of interests* or of *interdiction to have employment contract* with some types of companies after the expiration of the elective mandate are also not dealt with in this law. Therefore, following pertinent opinion of CDLR, a stricter approach is desirable, stipulating for example that elected representatives should declare their assets before and after their term of office, as well as provide information throughout their term of office about any personal and especially any financial interests connected with the business of the local or regional authority (see Art. 17 of the Code of Conduct about the declaration of interests).
55. According to the Ukrainian Law on Prevention of Corruption, a violation occurs in decision making when a conflict of interest has not been properly reported and resolved. Private interest is not limited to financial or material interests; nepotism and patronage are considered as subtypes of conflict of interest and they are regulated by the same legislation. According to Art. 59-1 of the Law on Local Self-Government in Ukraine, special permanent commissions of the local councils are responsible for consulting, monitoring and controlling the prevention and regulation of conflict of interests. When a real conflict of interest is revealed, the National Agency on Corruption Prevention (NACP) exhorts action from the authority involved. If the conflict of interest is not resolved within 10 days, the NACP reports an administrative violation. According to the Article 172.7 of the Administrative Code of Ukraine, in the case of real conflict of interest the sanction is a monetary fine and the deprivation of the right to hold certain activities for one year. Information on corruption-related offenses (such as conflict of interest) is collected in a single open database of individuals involved in corruption, which damages the image of the perpetrator.

## **VI. DISQUALIFICATIONS, LIABILITIES, SUSPENSION AND TERMINATION OF OFFICE**

56. Early termination of a local councillor's office is regulated in Art. 5 LSLC, which stipulates that powers of a local councillor shall be terminated early on the following grounds evidenced by official documents, without adoption of any resolution by the relevant council, in the event, inter alia, of:
- 1) *his recall by voters according to the procedure set forth herein; ...*
  - 2) *[deleted]*
  - 3) *termination of his citizenship of Ukraine or his departure from Ukraine for permanent residence abroad;*
  - 4) *his election or appointment to an office that, under the Constitution of Ukraine and the law, is incompatible with the exercise of councillor's powers;*
  - 5) *his election as councillor of another local council;*
  - 6) *upon being declared incapable or a missing person by a court;*
  - 7) *entering into force of a judgement of conviction that sentences him to deprivation of liberty, or entering into force of a court ruling to bring him to justice for a corruption or corruption-related offence,*

*which imposes a sentence or a penalty in the form of deprivation of the right to hold positions or to perform activities associated with the exercise of functions of the State or of local self-government; Powers of a local councillor may also be terminated early, upon a resolution by the relevant council, in connection with:*

- 1) entering into force of a judgement of conviction that sentences him to a penalty not associated with deprivation of liberty;*
- 2) a personal letter of resignation submitted by such local councillor."*

57. Art. 31 LSLC introduces a special Procedure for Notifying a Local Councillor of Suspicion of Commission of a Criminal Offence. The prosecutor who has notified a local councillor of suspicion of commission of a criminal offence shall advise thereof the respective local council. Also a court that has ordered a preventive measure against a local councillor shall advise thereof the respective local council on or before the following working day from the date of application of such preventive measure. These provisions are obviously aiming at informing on time the councillor and also the council. The latter can then consider whether some actions are requested in order to protect the authority of the council and/or the councillor.
58. In cases of investigation against councillors, a formal procedure of suspension could be introduced. Suspension of a local elected representative from office cannot be automatic if that person is under investigation but: it may exceptionally be ordered by the central authorities or by the electoral authority in very grave and emergency situations, through a decision that is subject to revision by the court; it could be ordered by the courts if continuation in elective office seriously threatens to hinder the judicial process or cause damage that is substantial or difficult to repair.
59. Immunity of elected councillors from legal proceedings is not practiced in Europe. Elected representatives may not, however, be held personally liable for acts performed on behalf of the authority unless there has been gross negligence or misconduct.
60. In the event of a serious breach of the specific rules governing the conditions of office of elected representatives (repeated unjustified absence from sittings, incompatibility of duties, failure to comply with the rules on withdrawal, etc.), penalties prescribed by law, such as suspension or dismissal (with the possibility of replacing the elected representative) should apply, and there should be appropriate measures for safeguarding the smooth functioning of the authority in such circumstances. In the case of other types of offences (such as unlawful enrichment or fraudulent management) reliance on the traditional judicial penalties seems effective enough. In Art. 37 LSLC, absence by a local councillor at more than half of council plenary sessions or standing committee meetings during one year and his failure to perform a local councillor's duties in a constituency, are mentioned as reasons for *Recall* (see above) of Local Councillor on Popular Initiative. It would, however, be recommended to introduce a procedure within the council itself or within the framework of administrative supervision, in order to suspend or dismiss councillors breaking the respective rules.

## CONCLUSIONS

61. The Law on the Status of Local Councillors should be reviewed, in order to comply with the standards and guidelines of the Council of Europe and take advantage of the existing experience in other European nations. An alternative would be to add the legal provisions about the Status of Local Councillors as a special Chapter in the Law on Local Self-Government in Ukraine.
62. There is a series of changes that would be suggested, according to previous comments in the text of this study. More specifically:
  - Consider the possibility of abolishing or drastically reviewing the provisions on Popular Recall of Councillors.
  - Reviewing and possibly removing the provisions attempting to regulate in detail the relationship between voters and councillors;
  - Reviewing the use of a party list electoral system, with a view to replacing it with a system in which individual councillors may be held accountable through electoral processes
  - Employ wider mechanisms of citizen engagement as a means of enhancing accountability. By requiring councillors to use and respond to broader participative mechanisms citizens would maintain means of signalling their views to councillors in between local elections.
  - Introducing codes of conduct which contain clear and concise statements of principle, along with the expectations of behaviour of councillors, and clear mechanisms and sanctions for breaches of the codes.
  - Systematically regulate the various types of liability and the conditions which are needed for it to be activated (serious negligence or deliberate tortious intent).
  - Clarifying the overlapping functions of groups, factions, bodies (standing committees) of local councillors;
  - Reviewing and possibly removing the possibility for councillors elected in one specific council to take part with deliberative vote in the proceedings of another council;
  - Matters of confidence should be raised by a minimum number of councillors (not by a single councillor), also in order to avoid problems of governability and stability in local authorities. Furthermore, dismissal of local officials should be subject to procedural and substantial guarantees and preconditions in order to avoid political and partisan pressure over officials. Therefore, a self-government official should not be exposed to a dismissal initiative coming from a single councillor
  - Local councillors without executive posts do not hold personal, but collegial authority as members of a collective body, the local council. Moreover, local staff should be protected against abuse and undue pressure from individual councillors.
  - Assessing and clarifying the authority / power of local councillors over the local administration called upon to implement political decisions; Defining the relationship between democratically elected local representatives and professional officers recruited on merits and acting according to the principle of neutrality and impartiality.

- It should be considered whether women quotas for councils and especially for executive posts could be introduced by the Law.
- The issues of *declaration of assets and conflict of interests* or of *interdiction to have employment contract* with some types of companies after the expiration of the elective mandate should be dealt with. Furthermore, councillors should declare their assets before and after their term of office.
- In cases of investigation against councillors, a formal procedure of suspension could be introduced.
- In the event of a serious breach of the specific rules governing the conditions of office of elected representatives, penalties prescribed by law, such as suspension or dismissal should apply, and there should be appropriate measures for safeguarding the smooth functioning of the authority in such circumstances
- It should be considered whether a special law on the status of local councillors is needed, or whether the addition of a special section in the existing comprehensive Law on Local Self-Government would be a better choice.