

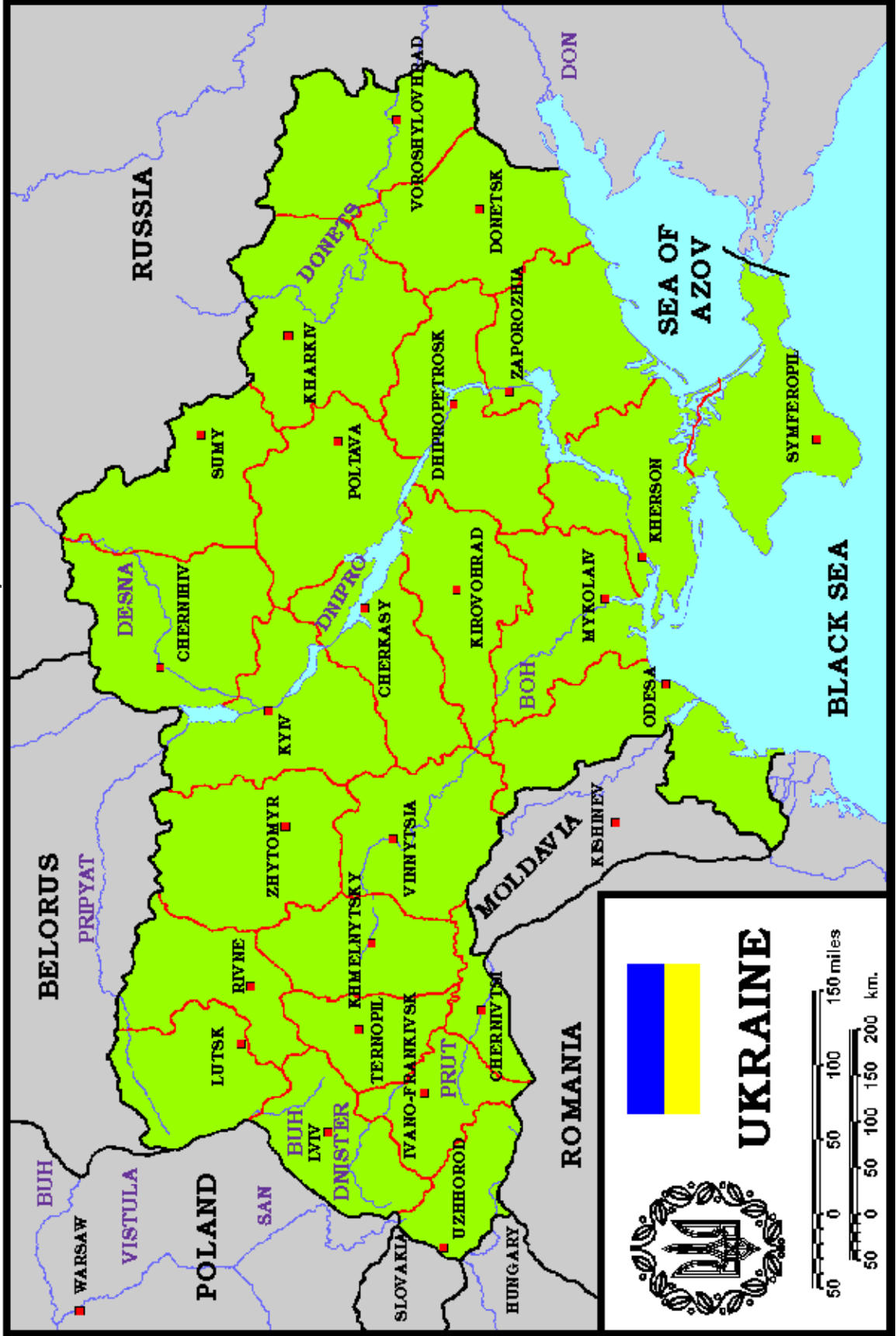


# **STRUCTURE AND OPERATION OF LOCAL AND REGIONAL DEMOCRACY**

**Ukraine**

**Situation in 2010**

UKRAINE  
Territorial set-up



# **STRUCTURE AND OPERATION OF LOCAL AND REGIONAL DEMOCRACY**

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Situation in 2010

*Report prepared in co-operation with the Ministry of Regional Development and Construction of Ukraine, adopted by the European Committee on Local and Regional Democracy on ...*



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## **1. LEGAL BASIS**

### **1.1. Constitutional provisions**

#### Article 7

"In Ukraine local self-government is recognised and guaranteed".

#### Article 19

"The legal order in Ukraine is based on the principles according to which no one shall be forced to do anything not envisaged by legislation.

Bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the Laws of Ukraine".

#### Article 38

"Citizens have the right to participate in the administration of state affairs, in all-Ukrainian and local referendums, to freely elect and to be elected to the bodies of state power and bodies of local self-government.

Citizens enjoy the equal right of access to the civil service and to service in bodies of local self-government".

#### Article 71

"Elections to bodies of state power and bodies of local self-government are free and are held on the basis of universal, equal and direct suffrage, by secret ballot.

Voters are guaranteed the free expression of their will".

#### Article 118

"The executive power in oblasts, districts, and in the Cities of Kyiv and Sevastopol is exercised by local state administrations.

Particular aspects of the exercise of executive power in the Cities of Kyiv and Sevastopol are determined by special laws of Ukraine.

The composition of local state administrations is formed by heads of local state administrations.

Heads of local state administrations are appointed to office and dismissed from office by the President of Ukraine upon the submission of the Cabinet of Ministers of Ukraine.

In the exercise of their duties, the heads of local state administrations are responsible to the President of Ukraine and to the Cabinet of Ministers of Ukraine, and are accountable to and under the control of bodies of executive power of a higher level.

Local state administration are accountable to and under the control of councils in the part of the authority delegated to them by the respective district or oblast councils.

Local state administrations are accountable to and under the control of the bodies of executive power of a higher level.

Decisions of the heads of local state administrations that contravene the Constitution and the laws of Ukraine, other acts of legislation of Ukraine, may be revoked by the President of Ukraine or by the head of the local state administration of a higher level, in accordance with the law.

An oblast or district council may express no confidence in the head of the respective local state administration, on which grounds the President of Ukraine adopts a decision and provides a substantiated reply.

If two-thirds of the deputies of the composition of the respective council express no confidence in the head of a district or oblast state administration, the President of Ukraine adopts a decision on the resignation of the head of the local state administration."

#### Article 119

"Local state administrations in their respective territory ensure:

- the execution of the Constitution and the laws of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine and other bodies of executive power;
- legality and legal order; the observance of laws and freedoms of citizens;
- the implementation of national and regional programmes for socio-economic and cultural development, programmes for environment protection, and also – in places of compact residence of indigenous peoples and national minorities – programmes for their national and cultural development;
- the preparation and implementation of respective oblast and district budgets;
- the report on the implementation of respective budgets and programmes;
- interaction with bodies of local self-government;
- the realisation of other powers vested by the state and also delegated by the respective councils".

#### Article 140

"Local self-government is the right of a territorial community – residents of a village or a voluntary association of residents of several villages into one village community, residents of a settlement, and of a city – to independently resolve issues of local character within the limits of the Constitution and the laws of Ukraine.

Particular aspects of the exercise of local self-government in the Cities of Kyiv and Sevastopol are determined by special laws of Ukraine.

Local self-government is exercised by a territorial community by the procedure established by law, both directly and through bodies of local self-government: village, settlement and city councils, and their executive bodies. District and oblast councils are bodies of local self-government that represent the common interests of territorial communities of villages, settlements and cities. The issue of organisation of the administration of city districts lies within the competence of city councils.

Village, settlement and city councils may permit, upon the initiative of residents, the creation of house, street, block and other bodies of popular self-organisation, and to assign them part of their own competence, finances and property."

#### Article 141

"A village, settlement and city council is composed of deputies elected for a four-year term by residents of a village, settlement and city on the basis of universal, equal and direct suffrage, by secret ballot.

Territorial communities elect for a four-year term on the basis of universal, equal and direct suffrage, by secret ballot, the head of the village, settlement and city, respectively, who leads the executive body of the council and presides at its meetings.

The status of heads, deputies and executive committees of a council and their authority, the procedure for their establishment, reorganisation and liquidation, are determined by law.

The chairman of a district council and the chairman of an oblast council are elected by the respective council and lead the executive staff of the council."

#### Article 142

"The material and financial basis for local self-government is movable and immovable property, revenues of local budgets, other funds, land, natural resources owned by territorial communities of villages, settlements, cities, city districts, and also objects of their common property that are managed by district and oblast councils.

On the basis of agreement, territorial communities of villages, settlements and cities may join objects of communal property as well as budget funds, to implement joint projects or to jointly finance (maintain) communal enterprises, organisations and establishments, and create appropriate bodies and services for this purpose.

The State participates in the formation of revenues of the budget of local self-government and financially supports local self-government. Expenditures of bodies of local self-government, that arise from the decisions of bodies of state power, are compensated by the state."

## Article 143

"Territorial communities of a village, settlement and city, directly or through the bodies of local self-government established by them, manage the property that is in communal ownership; approve programmes of socio-economic and cultural development, and control their implementation; approve budgets of the respective administrative and territorial units, and control their implementation; establish local taxes and levies in accordance with the law; ensure the holding of local referendums and the implementation of their results; establish, reorganise and liquidate communal enterprises, organisations and institutions, and also exercise control over their activity; resolve other issues of local importance, ascribed to their competence by law.

Oblast and district councils approve programmes for socio-economic and cultural development of the respective oblasts and districts, and control their implementation; approve district and oblast budgets that are formed from the funds of the state budget for their appropriate distribution among territorial communities or for the implementation of joint projects, and from the funds drawn on the basis of agreement from local budgets for the realisation of joint socio-economic and cultural programmes, and control their implementation; resolve other issues ascribed to their competence by law.

Certain powers of bodies of executive power may be assigned by law to bodies of local self-government. The State finances the exercise of these powers from the State Budget of Ukraine in full or through the allocation of certain national taxes to the local budget, by the procedure established by law, transfers the relevant objects of state property to bodies of local self-government.

Bodies of local self-government, on issues of their exercise of powers of bodies of executive power, are under the control of the respective bodies of executive power."

## Article 144

"Bodies of local self-government within the limits of authority determined by law, adopt decisions that are mandatory for execution throughout the respective territory.

Decisions of bodies of local self-government for reasons of non conformity with the Constitution or the laws of Ukraine, are suspended by the procedure established by law with a simultaneous appeal to a court."

## Article 145

"The rights of local self-government are protected by judicial procedure."

## Article 146

"Other issues of the organisation of local self-government, the formation, operation and responsibility of the bodies of local self-government, are determined by law."

## 1.2. Main legislative texts

The main legislative texts concerning local/regional authorities are:

- Constitution of Ukraine (Articles 140-146);
- Law on Local self-government in Ukraine;
- Law on Local state administrations;
- Law on the Capital of Ukraine – City Hero of Kyiv;
- Law on Elections of members of local radas and village, settlement and city mayors;
- Law on the National Ukrainian and local referenda;
- Law on the State and legal experiment of development of self-government in the City of Irpin, villages Bucha, Vorzel, Gostomel, Kotsyubinske of Kyiv Region;
- Law on the Status of members of municipal councils;
- Law on Population self-organisation bodies;
- Law on Amendments to the Law of Ukraine on basis of city construction;
- Law on Budget Code of Ukraine;
- Law on Transference the objects of state and communal property;
- Law on the Service in local self-government bodies;
- Law on General scheme of planning of the territory of Ukraine;
- Law on Land Code of Ukraine;
- Decree of the President of Ukraine on immediate measures relating to the implementation of the administrative reform in Ukraine;
- Decree of the President of Ukraine on measures relating to the social and economic development of the Autonomous Republic of Crimea and of the City of Sevastopol;
- Decree of the President of Ukraine on the Committee for the issues of administrative and territorial structure;
- Decree of the President of Ukraine on regulation on the Committee for the issues of administrative and territorial structure;
- Decree of the President of Ukraine on changing the members of the Committee for the issues of administrative and territorial structure;
- Decree of the President of Ukraine on the day of Local self-government;
- Decree of the President of Ukraine on the National Council for coordinating the activities of state bodies, regional and local authorities;
- Decree of the President of Ukraine on regulation on the National Council for coordinating the activities of state and regional authorities and local self-government authorities;
- Decree of the President of Ukraine on the creation of the local police;
- Decree of the President of Ukraine on the conception of state regional policy;
- Decree of the President of Ukraine on regular measures relating to the further implementation of the administrative reform in Ukraine;
- Decree of the President of Ukraine on the national Ukrainian contest of the projects and programs of local self-government development;
- Decree of the President of Ukraine on the state support of local self-government development in Ukraine.

## 2. STRUCTURE OF LOCAL/REGIONAL AUTHORITIES

### 2.1. Main subdivisions

1. village, settlement, city (first tier of self-government in Ukraine)
2. raion, oblast (second tier of self-government in Ukraine)

The principle units of administrative territorial organisation in Ukraine are the gromada, the territorial communities of villages, settlements and cities. Gromada is the local population living in a village, settlement or city, and is established as an independent administrative territorial unit, or a voluntary union of citizens from several villages, which have one administrative centre. (Article 1 of the Law of Ukraine "on Local self-government in Ukraine").

## 2.2. Statistical data

### 2.2.1. Total number of units

Units	1950	2003
Oblast	25	24
Raion	261	490
Cities	75	453
Settlements	478	887
Villages	16 357	28 615

### 2.2.2. Surface area and population of the regions

Oblasts	Area (km <sup>2</sup> )	Population
Autonomous Republic of Crimea	26 100	2 018 400
Vinnitsa oblast	26 500	1 754 200
Volyn oblast	20 200	1 054 900
Dnipropetrovsk oblast	31 900	3 531 900
Donetsk oblast	26 500	4 773 400
Zhitomyr oblast	29 900	1 374 200
Zakarpattia oblast	12 800	1 253 800
Zaporizhya oblast	27 200	1 908 700
Ivano-Frankivsk oblast	13 900	1 403 500
Kyiv oblast	28 100	1 808 200
Kirovograd oblast	24 600	1 116 000
Lugansk oblast	26 700	2 507 000
Lviv oblast	21 800	2 610 100
Mikolaiv oblast	24 600	1 251 400
Odessa oblast	33 300	2 447 100
Poltava oblast	28 800	1 609 400
Rivne oblast	20 100	1 168 600
Sumy oblast	23 800	1 280 100
Ternopil oblast	13 800	1 134 100
Kharkiv oblast	31 400	2 887 300
Kherson oblast	28 500	1 161 500
Khelmnitsk oblast	20 600	1 414 800
Cherkasy oblast	20 900	1 387 300
Chernivtsy oblast	8 100	918 100
Chernigiv oblast	31 900	1 225 600
<b>Total</b>	<b>603 700</b>	<b>47 993 000</b>

### 2.3. Special structures for particular areas

The cities of Kyiv and Sevastopol and the Autonomous Republic of Crimea (ARC) have a special status in Ukraine under the Constitution. The ARC is, according to the Constitution of Ukraine and the Constitution of ARC, the only autonomous structure within the territory of Ukraine. The city of Kyiv, according to the Constitution of Ukraine and the Law of Ukraine "on the Capital of Ukraine – the hero-city Kyiv", adopted in 1999, is of state level. The city is divided into 10 districts (raions) The population of Kyiv is 2 631 900. The status of Sevastopol is regulated currently by the Decree of the President of Ukraine. The law "on the City of Sevastopol" has been submitted to the Verkhovna Rada (the Parliament of Ukraine) for a first reading. The population of Sevastopol is 389 400.

### 2.4. Regulations governing changes in structures

The city, settlement or village council is the competent body for taking decisions on administrative and territorial structures (point 41 Art. 26, Para. 1 of the Law of Ukraine "on Local self-government in Ukraine"). Amalgamation of administrative territorial units with a common administrative centre is decided exclusively in local referenda. (Art. 6 of the Law of Ukraine "on the National Ukrainian and local referenda").

### 2.5. General units of state administration at local/regional level

Under Articles 118 and 119 of the Constitution of Ukraine, the local state administrations exercise executive power in oblasts and raions, as well as in the cities of Kyiv and Sevastopol.

## 3. ORGANS OF EACH CATEGORY OF LOCAL OR REGIONAL AUTHORITIES

### 3.1. Deliberative body

#### 3.1.1. Title – Rada (Council)

There are oblast, raion, city, settlement and village councils.

#### 3.1.2. Composition

Under Article 5, para.3 of the Law of Ukraine "on Elections of the members of local councils, village, settlement and city mayors", the respective council determines its composition on the basis of the population size of the respective area (see the scheme below). For example, the council of a community which has a population of up to 3 000 residents may have at least 15 members, but no more than 25.

Number of residents	Number of members
<= 3 000	15-25
<= 5 000	20-30
<= 20 000	25-35
<= 50 000	30-45
<= 100 000	35-50
<= 250 000	40-60
<= 500 000	50-75
<= 1 mln	60-90
=> 1 mln	75-120

### 3.1.3. Method of election

Elections are direct, and based on the system of majority rule.

## 3.2. Executive body

### 3.2.1. Title

The title of the executive body of the village, settlement or city council is Vykonkom. Raion and oblast councils do not have their own executive bodies.

### 3.2.2. Composition

The composition of the executive body is defined autonomously by the respective council, and its staff is approved by the council following a proposal by the city (village, settlement) mayor.

### 3.2.3. Method of appointment

The executive body is appointed by the council following a proposal by the mayor.

## 3.3. Political head of the local/regional authority

### 3.3.1. Title

The title of the political head of local/regional authorities is:

- Mayor (golova) of a city (village, settlement);
- Chairman of the oblast council;
- Chairman of the raion council.

### 3.3.2. Nature of the function and relationship to the deliberative and/or executive bodies

In cities, villages, settlements the mayor represents the interests of the gromada and manages the activities of the executive organs. He presides over the sessions of the council.

In oblasts and raions the chairman is the head of the council.

### 3.3.3. Method of election

In cities, villages and settlements, representatives are directly elected by citizens of the gromada (by simple majority of votes).

In oblasts and raions, chairmen are elected by the members of the council (Article 55, paragraph 2 of the Law of Ukraine "on Local self-government in Ukraine" - see also 3.4.2).

### 3.3.4. Does the political head of the local/regional authority exercise certain functions on behalf of the state?

The mayor of a city (village, settlement) may execute some functions delegated by state authorities (Article 42 of the Law of Ukraine "on Local self-government of Ukraine").



### **3.4. Head of administration**

#### 3.4.1. Title

The mayor of a city (village, settlement) is also the head of the municipal administration.

Regional and rural district councils do not have their own executive bodies. Under Article 44 of the Law of Ukraine "on Local self-government" the functions of executive bodies of regional and rural district councils are carried out by regional and rural district state administrations respectively.

#### 3.4.2. Nature of the function and relationship to the deliberative body

The proper functions of the mayor are defined in point 3 of Article 42 of the Law of Ukraine "on Local self-government". On its territory, the Mayor of the city (village, settlement):

- executes the powers delegated by the executive authority;
- upholds the Constitution of Ukraine and the Laws of Ukraine;
- carries out Decrees of the President of Ukraine and of other relevant executive bodies.

### **3.5. Division of powers and responsibilities between the different organs of the local or regional authority**

The division of powers and responsibilities between a local council and its executive bodies is defined by the Law of Ukraine "on Local self-government in Ukraine" (Art. 26-41) The councils take decisions in their area of competence, as conferred by article 44 of the Law of Ukraine "on Local Self-government in Ukraine" and allocate powers of rural district and regional councils to the appropriate Local State Administrations. The executive bodies of the councils mostly fulfil decisions in their area of competence, as conferred by law.

Rural district and regional councils shall delegate the following powers to the appropriate local state administrations:

- 1) to prepare and submit to the council for consideration draft programmes for socio-economic and cultural development of rural districts and regions and to identify programmes on other issues, and in places with a high ethnic minority population – e.g. programmes for their national and cultural development, draft decisions, and other materials on issues envisaged by this article; to ensure the execution of the council's decisions;
- 2) to prepare proposals for socio-economic and cultural development programmes for regions, as well as national programmes for the economic, scientific and technical, social and cultural development of Ukraine;
- 3) to provide for the balanced economic and social development of the appropriate territory, and the efficient use of natural, human and financial resources;
- 4) to prepare and submit to the relevant executive bodies financial indicators and proposals for the draft state budget of Ukraine;

- 5) to promote investment activities on the territory of the rural district and region; in accordance with the law, to involve non-communal enterprises, institutions and organizations, in the provision of public services in the appropriate territory, and to coordinate this work;
- 6) to approve routes and schedules for local public transport;
- 7) to organize the protection, restoration and utilisation of historical and cultural monuments, architecture and city construction, the palace-park, other parks and orchard complexes, and natural parks of local significance;
- 8) to evaluate the draft local programmes for city construction for the appropriate administrative-territorial units, which are approved by the village, settlement, and city councils;
- 9) in accordance with the law, to provide developers with architectural planning assignments and technical specifications for projects, the construction and reconstruction of houses and buildings;
- 10) to ensure, in accordance with legislation, the development of science, all forms of education, health care, culture, physical culture, sports, and tourism; to promote the revival of traditional folk centres, popular national and cultural traditions, artistic crafts and trades, work of artistic unions, national and cultural societies, associations, and to encourage the activity of other civic and non-profit organisations, which act in the areas of education, health care, culture, physical culture and sports, family and youth;
- 11) to prepare and submit proposals for the council's approval on the organisation of territories and the reserve fund for natural parks of local significance and other areas of land which enjoy special protection; to submit proposals to the relevant state bodies for classification of natural parks and other parks of ecological, historic, cultural or scientific value as historic or cultural monuments, which are protected by law;
- 12) to take the necessary measures to eliminate the environmental consequences of ecological and natural disasters, epidemics, epizootic and other emergency situations, to inform the population thereof, and to encourage enterprises, institutions and organisations, as well as the population to participate in the foregoing activities, in procedures established by law;
- 13) to co-ordinate, on the appropriate territory, the activities of local bodies for governing land relations.

Article 43 of the Law of Ukraine "on Local self-government in Ukraine" defines the powers and responsibilities of the raion and oblast councils, which are as follows:

- approval of the budget;
- approval of programmes on social, economic and cultural development of the respective area;
- administrative and territorial reorganisation of the respective area;
- casting a vote of no-confidence in the Head of the State administration (by 2/3 majority of council members).

### **3.6. Legal provisions concerning the internal structures**

Part V of the Law “on Local self-government in Ukraine” defines procedures for the setting up and operation of local council internal structures.

## **4. DIRECT CITIZEN PARTICIPATION IN DECISION-MAKING**

### **4.1. Local/regional referenda**

The Law of Ukraine "on the National Ukrainian and local referenda" and Article 7 of the Law of Ukraine "on Local self-government in Ukraine" provide for local referenda and their organisation. Under Article 7 decisions taken by local referenda are decisive and binding on certain territories.

### **4.2. Other forms of direct participation**

- Common meetings of the citizens are a form of direct participation for addressing local problems. (Article 8 of the Law of Ukraine "on Local self-government in Ukraine");
- Local initiatives: the inhabitants of territorial communities have the right to raise for consideration by the local council any local problems that are within the local council's scope of competence. (Article 9 of the Law of Ukraine "on Local self-government in Ukraine");
- Public hearings: a meeting between the inhabitants of a territorial community, the deputies of the council and the employees of the executive committee. (Article 13 of the Law of Ukraine "on Local self-government in Ukraine");
- Civic associations: the village, settlement, or city council can allow the establishment of house, street, neighbourhood and other units of association (Article 14 of the Law of Ukraine "on Local self-government in Ukraine").

## **5. STATUS OF LOCAL ELECTED REPRESENTATIVES**

### **5.1. Conditions for standing in local elections**

In order to stand for election, candidates must be a citizen of Ukraine, eligible to vote and 18 years of age or over on the day of elections. (Article 6, paragraph 4 of the Law of Ukraine "on Elections of members of local councils and village, settlement and city mayors").

### **5.2. Activities incompatible with the performance of a local elected representative's duties**

Mayors (golovas) of cities, settlements, villages, secretaries of the city, village, settlement councils, chairmen, vice chairmen of oblast and rayon councils may not take on other activities, with the exception of creative, teaching and scientific activities. (Article 6, paragraph 2 of the Law of Ukraine "on the Status of members of local councils"). Ordinary members, however, are not restricted in terms of the type of activities they take part in which lie outside the scope of their council duties.

### **5.3. Regulations governing the financing of election campaigns**

The regulations governing the financing of candidates' election campaigns in local elections are set out in Articles 51-53 of the Law of Ukraine "on Elections of members of local councils and village, settlement and city mayors". Any funding or other form of support to political parties or individual candidates by public authorities (state and local self-government bodies) during election campaigns are prohibited by Ukraine national legislation.

### **5.4. Term of office of elected representatives**

The term of office for an elected representative is 4 years. (Article 1, paragraph 1 of the Law of Ukraine "on Elections of members of local councils and village, settlement and city mayors").

### **5.5. Can an elected representative hold several elective offices simultaneously?**

Elected representatives may not hold more than one elected office at any one time. (Article 6, paragraph 5 of the Law of Ukraine "on Elections of members of local councils and village, settlement and city mayors").

### **5.6. Duties and responsibilities of local elected representatives**

The duties and responsibilities of local council members are:

- to foster contact with the electorate, the relevant territorial community and public organisations which have promoted them as a candidate, as well as with associations of enterprises, non-governmental organisations (NGOs), local self-government authorities, local state administrations, situated in the relevant territory;
- to inform the electorate half-yearly on the activity of the local council and its organs, on work in progress on economic and social development plans and programmes, local budget matters, decisions of the council and issues raised by the electorate;
- to take part in ensuring decisions by the council, its organs and the electorate are carried out, in mass measures, which are held by local self-government authorities in the territory of the community or elective ward;
- to consider public opinion and the needs of the territorial community, to inform the council and its organs about them and to participate directly in finding solutions;
- to set and publish the election dates, hours and location of polling booths; to receive voters on a regular basis; to consider on a monthly basis proposals, applications and complaints made by members of the territorial community, and to implement measures for resolving issues (Article 10, paragraph 1 of the Law of Ukraine "On the status of members of local councils");
- to uphold the Constitution and laws of Ukraine, acts of the President of Ukraine, of the Cabinet of Ministers of Ukraine, the order of business of the council and other normative legal standards, which determine the order of council and its organs activities;

- to take part in the work of the council, standing committees and other organs, and to promote the implementation of decisions taken by the structure to which they belong;
- to carry out duties for the council, its organs, the village, the settlement and city chairman or the chairman of the council; to keep them informed of decisions taken. (Article 18 of the Law of Ukraine "On the status of members of local councils").

Elected representatives are not required to declare their personal and financial interests.

An elected representative may be recalled (Section V of the Law of Ukraine "on the Status of members of local councils").

### **5.7. Resignation**

The conditions governing resignation are set out in Article 5 of the Law of Ukraine "on the Status of members of local councils").

### **5.8. Duties or activities that may not be exercised post mandate**

There are no duties or activities that may not be exercised by an elected representative once his/her term of office has come to an end.

Under Article 33, paragraph 2 of the Law of Ukraine "on the Status of members of local councils", a member of a local council is entitled to return to her/his previous job/post or, where this is not possible, to a job or post of equal value in the same, or, with the agreement of the person concerned, another enterprise or organisation.

### **5.9. Elected representatives' working conditions**

Local councils and their bodies are to provide the necessary conditions for the efficient exercise of the authority of members of local councils. (Article 30, paragraph 2 of the Law of Ukraine "on the Status of members of local councils").

The council and its organs assist the local council members in their activities by creating certain conditions, providing them with documents, reference material, information and other materials necessary for the efficient exercise of members' authority.

### **5.10. Training of elected representatives**

Training of local council members in legislation and the work of councils is organised by the council and its organs .

### **5.11. Leave conditions**

A local council member is free from all obligations arising from official duties during session time, local council standing commission meetings, and in order to exercise other deputy's authorities in circumstances provided by law. (Article 32, paragraph 1 of the Law of Ukraine "on the Status of members of local councils"). Local council members are entitled to leave of absence from their usual place of employment to attend council plenary meetings and other council meetings, as well as to perform duties directly arising from their work for the council.

When members indicate their intention to leave, a local council may terminate their mandate in advance. (Point 2 Para. 2 Article 5 of the Law of Ukraine "on the Status of members of local councils").

### **5.12. Remuneration of elective office**

An elected representative is remunerated for working full-time in the council or its executive bodies, as an official.

Elected representatives who receive remuneration are subject to taxation.

The remuneration received by elected representatives for the performance of their duties is subject to deduction of contributions for health insurance and retirement pension schemes.

### **5.13. Reform of the status**

The new version of the Law "on Local self-government in Ukraine" was approved by the Parliament of Ukraine in the first reading.

### **5.14. Are the sexes fairly represented?**

About 17% of elected local representatives are women.

## **6. DISTRIBUTION OF POWERS BETWEEN THE VARIOUS CATEGORIES OF LOCAL AND REGIONAL AUTHORITIES**

### **6.1. Principles governing the distribution of powers**

The competences of local and regional authorities and their distribution are defined restrictively by the Constitution and legislation of Ukraine.

### **6.2. Competences of local and regional authorities**

The competences of local and regional authorities are set out in the Constitution and current legislation of Ukraine, particularly in the Laws "on Local self-government in Ukraine" and "on Local state administrations".

### **6.3. Participation of local/regional authorities in national economic and spatial planning**

Local and regional authorities participate at national economic and spatial level by taking part in:

- the Interministerial Commission under the Cabinet of the Minister responsible for local self-government issues;
- the National Council for co-ordinating the activities of state, regional authorities and local self-government authorities under the President of Ukraine;
- the Working Group established by the Verkhovna Rada for tabling proposals on local self-government development;
- the Committee on administrative and territorial structure issues;
- the Interministerial Council under the Cabinet of Ministers responsible for the preparing the draft Law of Ukraine "on Administrative and territorial structure of Ukraine".

#### **6.4. Tasks delegated to local or regional authorities acting as agents of the central authority**

The delegated tasks of local and regional authorities are defined in the Law of Ukraine "on Local self-government in Ukraine" (Art. 27-38). The tasks are delegated in the following spheres:

- social and economic and cultural development (Art.27);
- budget (Art.28);
- on administration of communal property (Art.29);
- housing and communal services, transport and communication (Art. 30);
- construction (Art.31);
- education, health protection, sport (Art.32);
- economic environment (Art.33);
- social protection (Art.34);
- external economic activity (Art.35);
- defence activity (Art. 36);
- protection of rights, freedoms and legal interests of citizens (Art. 38).

#### **6.5. Proposals or bills leading to an important change in the distribution of powers**

- the Draft Law "on Local self-government in Ukraine" provides for a clearer and more transparent distribution of competences between state and local authorities;
- the Draft Law "on the Administrative-territorial reform in Ukraine".

### **7. CO-OPERATION AND OTHER TYPES OF LINKAGE BETWEEN LOCAL/REGIONAL AUTHORITIES**

#### **7.1. Legislative provisions**

According to Article 15 on the "Form of Voluntary Unification of Local Self-Government Authorities" from the Law of Ukraine "on Local self-government in Ukraine":

- Local self-government authorities, with the aim of exercising their powers more effectively as well as protecting the rights and interests of territorial communities, may form an association or other voluntary structure, subject to registration at the various bodies of the Ministry of Justice of Ukraine, as provided by law.
- Local self-government authorities and their associations may enter any corresponding international association, or other voluntary associations of local self-government authorities.

#### **7.2. Co-operation between local/regional authorities in different countries**

##### **7.2.1. General provisions**

Local self-government authorities and their associations may join corresponding international associations and other voluntary unions of local self-government authorities (Article 15, paragraph 2 of the Law of Ukraine "on Local self-government in Ukraine").

In Ukraine there are 4 Euroregions:

- Euroregion "*Bug*" (Ukraine, Poland, Belarus);
- "*Carpathian*" Euroregion (Hungary, Poland, Romania, Ukraine, Slovakia);
- Euroregion "*Upper Prut*" (Ukraine, Moldova, Romania);
- Euroregion "*Lower Danube*" (Ukraine, Romania, Moldova).

A draft law on transfrontier co-operation is in the preparation stages.

## **8. FINANCE**

### **8.1. Taxes**

#### 8.1.1. List of local and/or regional authorities "own taxes"

- land tax;
- tax from vehicle owners;
- tax on hunting, trapping and fishing, which is assigned to local self-government budgets;
- environmental pollution tax, paid into the corresponding budget;
- agricultural tax, which is paid into local self-government budgets;
- payment for the rental of housing estates, which are part of the communal property;
- tax on the revenue of communal property enterprises;
- payments for special use of natural resources of local importance;
- costs of property amortisation, which is part of the communal property;
- revenues from local auctions and distribution lotteries;
- grants;
- budget institutions' revenues;
- interest from the transient usage of spare budget money;
- fee for the guarantee of keeping terms.

#### 8.1.2. List of taxes levied in addition to state taxes

- tax on selling imports (Article 1 of the Decree of the Cabinet of Ministers of Ukraine "on local taxes and fees");
- hotel fees;
- fees for parking cars;
- market fee;
- fees for the receipt of order to apartment;
- dog owner tax;
- resort fee;
- betting tax on participation in racetrack events;
- winnings' taxes on racetrack events;
- totalisator taxes on racetrack events;
- advertising tax;
- fee for the right to use local symbols;
- fee for the right to shoot movies and TV programmes;
- local auctions, competition sales and lottery taxes;
- communal tax;
- transport tax for crossing border regions and going abroad;
- tax for the right to place trade objects.



8.1.3. Are the local and regional authorities free to fix the rate or percentage of these taxes?

According to Article 15 of the Law on taxes, village, settlement and city councils are free to fix local taxes and fees, their rates and percentages, and payment method, with the exception of taxes paid for crossing borders and going abroad. This type of tax is established by the regional councils.

8.1.4. Are the local and regional authorities entitled to introduce new types of taxes?

Local self-government authorities are entitled to introduce new types of local taxes and fees (Article 69, paragraph 1 of the Law of Ukraine "on Local self-government in Ukraine").

8.1.5. List of general taxes with a fixed amount

- income tax from citizens;
- state tax;
- charges for licences and certificates for specific types of economic activity;
- payment for enterprise registration;
- payment for trade patents;
- income from fines for administrative offences;
- single tax for the owners of small enterprises.

8.1.6. List of taxes with shared amount

Tax on additional cost, excise fee.

8.1.7. Statistical data

#### Local budget incomes in 2001

Income tax paid by citizens	35%
Income tax paid by companies	11%
Land payments	7%
Income from privatisation of state property	1%
Budget grants	24%
Fixed subsidies	4%
Compensation in the framework of co-operation	1%
Other incomes	17%

#### Local taxes and state taxes, allocated between local budgets (in millions of hrivnas)

	2000	2001
Incomes Total	9 567	12 956
Divided taxes	8 069	12 956
Local taxes	460	516
Other incomes	1 038	2 499

## **8.2. Grants from higher authorities**

### 8.2.1. Subsidies and subventions

The State grants special subsidies for implementation of additional competences transferred to the local self-government bodies. Financial transfers from the state budget to local budgets are composed of:

- 1) equalisation grants for ensuring balanced economic development of all Ukrainian territories;
- 2) special subsidies granted in order to ensure the fulfilment of the particular competences transferred by the state to the local authorities.

List of equalisation grants allocated:

- equalisation grants to the budget of the Autonomous Republic of Crimea (ARC) and oblasts' budgets, the budgets of the cities of Kyiv and Sevastopol, the cities in the ARC and the cities of the oblast and rural districts;
- subsidy paid from the Ukraine state budget to local budgets for social protection programmes;
- subsidy paid to compensate income losses to local self-government budgets arising from the exercise of their own competences as a result of state tax relief;
- subsidies from the state budget of Ukraine for investment projects;
- other subsidies.

There is no clear mechanism for dividing funds for investment payments. Some oblasts such as Dnipropetrovsk, Donetsk, Kyiv and Lugansk oblasts and the city of Kyiv are awarded more grants for investment than other oblasts. Amounts awarded vary from year to year. The grants for investment expenditure are mostly given to oblasts with a developed industry.

### 8.2.2. Specific grants

Specific grants from the state budget to the local/regional budgets are defined in the annual Law “on the State budget of Ukraine”. Most of these subsidies are aimed to offset the consequences of natural disasters and accidents, and to preserve the historical places of Ukraine.

### 8.2.3. Grants system

The grants system is regulated by the Budget Code of Ukraine, the annual Law of Ukraine “on the State budget of Ukraine” and the annual Decree of the Cabinet of Ministers of Ukraine “on approving the formula for distribution of the amount of inter-budgetary transitions between the state budget and local budgets”.

## **8.3. Equalisation arrangements**

For budgets where expenditure exceeds income equalisation grants are paid to offset deficits. For budgets where income exceeds expenditure the surplus is paid to the state budget of Ukraine. The equalisation coefficient applied to the budget is defined by the government as ranging from 6.6 to 1, so this equalisation can be more or less significant.

#### **8.4. Other sources of income**

Revenues from privatisation of state property.

#### **8.5. Borrowing**

8.5.1 Do local and regional authorities require authorisation from higher authorities to raise loans?

No authorisation from higher authorities is needed for raising loans.

8.5.2. Sources of borrowing

The Council or, by its decision, other local self-government organs, have, according to legislation, a right to issue local loans, lotteries and other securities, to obtain loans from other budgets for covering temporary cash-flow problems. These mature at the end of the budgetary year. They may also take out loans with banking establishments. (Article 70, paragraph 1 of the Law of Ukraine "on Local self-government in Ukraine").

8.5.3. Possibilities for local and regional authorities to borrow from foreign public or para public agencies or raise loans on foreign capital markets

Foreign loans can only be taken by city councils of cities with a population of more than 800 000 inhabitants, as according to official statistics (Article 16, paragraph 2 of the Budget code of Ukraine).

#### **8.6. Financial control by the higher authorities**

The Treasury Department exercises general supervision over the income and expenditure of local self-government authorities and state administrations.

Local budgets are independent, they are not included in the state budget of Ukraine, nor in the budget of the Autonomous Republic of Crimea or other local budgets. (Article 16, paragraph 6 of the Law of Ukraine "on Local self-government in Ukraine").

Local self-government authority revenues and expenditure must be within the framework set out by legislation.

### **9. CONTROLS OVER LOCAL/REGIONAL AUTHORITIES**

#### **9.1. General administrative supervision of the acts of local/regional authorities**

State control over the activities of organs and local self-government authorities can be exercised only on the basis and in conformity with the Constitution and laws of Ukraine. State organs or their officials may not interfere with the exercise by local self-government authorities of their own powers (Article 20 of the Law of Ukraine "on Local self-government in Ukraine").

Article 35 of the Law of Ukraine “on Local state administrations” regulates the relationship between state administrations and local self-government bodies. State local administrations have no right to interfere in the exercise by local authorities of their own powers and responsibilities.

In 2006, Ukraine introduced the system of administrative courts. The courts were set up to hear all disputes arising between State and local government bodies.

### **9.2. Remedies for local authorities against abusive exercise of administrative controls**

Local authority organs and officials have a right to appeal to the courts against acts of local state administrations, enterprises, establishments and organisations, which impede on the rights of territorial communities and local self-government bodies and officials. (Article 71, paragraph 4 of the Law of Ukraine "on Local self-government in Ukraine").

### **9.3. Audit of the accounts of local authorities**

The Treasury Department exercises general supervision over the incomes and expenditures of local self-government authorities, in the same way as it does over state administrations.

## **10. REMEDIES FOR INDIVIDUALS AGAINST DECISIONS OF LOCAL/REGIONAL AUTHORITIES**

Article 74 of the Law of Ukraine "on Local self-government in Ukraine":

1. Organs and officials of local self-government are accountable for their activities to the territorial community, state, legal and natural persons.
2. The responsibility of local self-government organs and officials is defined in the Constitution of Ukraine, the Law on Local Self-Government and other laws.

Article 77 of the same Law:

1. Damage caused to legal and natural persons as a result of illegal decisions or acts or omissions by local self-government organs are compensated from the local budget. Compensation for damage arising from illegal decisions or acts or omissions by local self-government officials is paid from their own means, as provided by law.
2. Disputes over the restoration of infringed rights of legal and natural persons, violated as a result of decisions, acts or omissions of local self-government organs or officials are settled in court.

## **11. LOCAL/REGIONAL ADMINISTRATIVE PERSONNEL**

### **11.1. Definition of main categories of personnel**

The Law “on the Service in the local self-government bodies” defines 7 categories of personnel.

## **11.2. Authority responsible for administrative status**

In Ukraine the authority responsible for administrative status is the Main Directorate of State Service of the Cabinet of Ministers of Ukraine.

## **11.3. Authority responsible for financial status**

The authorities responsible for financial status are:

- the Auditor Directorate under the Ministry of Finance of Ukraine;
- the Auditor Chamber of the Verkhovna Rada.

## **11.4. Relationship of conditions of service to those of national civil service**

Local state administration is a local organ of executive power and is part of the system of organs with executive power (Article 1, paragraph 2 of the Law of Ukraine "on Local state administrations").

## **11.5. Authority responsible for appointment**

The conditions of appointment to local self-government bodies are defined in the Law on the Service in local self-government bodies (Part III, Art. 10):

- the respective council approves the appointment of the Chair and Vice-Chair<sup>1</sup> of the regional, district, and city councils; the Vice deputy to the Chair of the city, village or settlement; the head of the Standing Commission on budget of the regional council and Kyiv and Sevastopol city councils;
- the respective councils approve the appointment of Vice-deputies to the Chair of the village, settlement and city on issues concerning activities of the council's executive committee; the executive secretary of the executive committee of the village, settlement and city councils;
- the Chair of the regional, district councils and the Chair of the village, settlement and city councils appoint respectively the head of the Secretariat of the district and regional councils; the head of the executive staff<sup>2</sup> of the regional and district councils, heads of departments, directorates and other officials of local self-government bodies.

## **11.6. Numbers**

About 68 000 officials are employed by the local self-government bodies.

## **12. REFORMS ENVISAGED OR IN PROGRESS**

Administrative reform in Ukraine provides for:

- distribution of the competences between state authorities and local self-government authorities;

<sup>1</sup> The chair and vice-chair are elected from among the members of the relevant council (regional or rural district).

<sup>2</sup> The local civil servants of the executive bodies of the relevant councils are appointed by a decision of the mayor - president of the respective council.

- further development of regional and local democracy; implementation of Recommendation 102(2001) of the Congress of Local and Regional Authorities of the Council of Europe;
- reorganisation of the territorial structure (only at basic level – amalgamation of gromadas).

Ukraine is going to implement an important decentralisation reform which can be viewed as a part of a wider public administration reform, requiring the redistribution of tasks, competences, and resources between central, regional, and local level. In particular, this means the transfer of wider responsibilities, competences, and resources from central authorities to the local self-government (LSG) authorities, according to the principles of ECLSG.

Various legal acts in the area of local self-government have been adopted at different times since the proclamation of independence and are based on different ideologies. As a consequence, they are not internally harmonised. A number of legislative provisions on local self-government are contradicted by the legislation on territorial organs of state executive power, leading to conflicts of competences between local self-government and central executive authorities. In order to resolve these contradictions, there is a need for a comprehensive decentralisation strategy and a local government reform, which would include harmonisation of all relevant legislation, including constitutional amendments.

The administrative-territorial reform (ATR) represents an important part of the decentralisation strategy for Ukraine. The current territorial administrative system of Ukraine is quite complex. Ukraine's sub-national governance has suffered from overlaps between the different levels of sub-national government (in terms of responsibilities, resources and, in some cases, boundaries), and between local self-government and local state administration. The ATR can resolve the anomalies (of status, territory, role, functions) of the raion as an institution. The ATR can also strengthen the gromada by seeking a size of the unit consistent with its functions and responsibilities. Finally, the ATR will achieve the separation between local self-government and central state functions, and minimise interference in LSG.

A major impediment to the development of local self-government in Ukraine remains its financial weakness. In addition to vertical imbalances in revenue allocation, the level of own resources (around 20% of total local revenues) and especially of local taxation (2.5%) is low and resources are increasingly unequal between local budgets along with increasing regional disparities. There is also a need to provide for a stronger financial basis of local self-government units, especially through the granting of new tax powers. The introduction of a local property tax should be one of the last steps of the whole reform. New legislation on the taxation of land based on its market value should be the first stage in the introduction of a property tax. Finally, in conjunction with the administrative-territorial reform and the review of allocation of functions, a review of the present system of state grants and equalisation is needed.

The decay of housing and the municipal economy is probably one of the most painful issues for the population of Ukraine. According to the *National Programme of Reform and Development of the Housing and Municipal Economy for 2007-2011*, it is the government's priority to concentrate its efforts on modernising the housing and the municipal economy. In July 2009 the Government adopted and the President signed a new *National Programme of Reform* until 2014.

The Ministry of Regional Development and Construction of Ukraine prepared the new Decentralisation Strategy for Ukraine which is composed of the following documents (policy documents which were approved by the Ukrainian Government):

- Concept paper for the State Regional Policy;
- Concept paper for the Reform of Administrative-Territorial Division;
- Concept paper for the Local Self-Government Reform; and
- Concept paper for the drawing up Training Programmes for Representatives of Local Self-Government Bodies and Deputies of Local Councils.

On the basis of the approved documents the Ministry finalised the following draft laws which should shortly be examined by the Ukrainian Parliament:

- 1) “on the Principles of State Regional Policy”;
- 2) “on Local Self-Governance”;
- 3) “on Local State Administrations”;
- 4) “on Administrative-Territorial Division”;
- 5) new Budget Code.