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Policy Advice on Legal Personality at Local Level

The present report was prepared by the Centre of Expertise for Good Governance,
Department of Democracy and Governance, Directorate General II – Democracy

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1. Introduction

The issue of legal personality at local level in Ukraine is being highly debated, and it gained additional attention of the international community largely with the European Parliament adopting in February 2021 a [resolution](#)¹ which “calls for the introduction of the concept of a territorial public entity as a legal person”. Subsequently, the concept was also supported by ambassadors of G7 countries accredited to Ukraine.

As a consequence, the Ukrainian Parliamentary Committee on State Building, Local Self-Government, Regional and Urban Development requested specialised assistance from the Council of Europe in order to analyse the current context in Ukraine and other European countries and support the Committee in “elaborating recommendations for the legal position of the Committee and other Ukrainian stakeholders regarding the legal personality of communities”.

In response, the Centre of Expertise for Good Governance of the Council of Europe has organised a number of activities within the framework of the Programme “Enhancing decentralisation and public administration reform in Ukraine”:

- Through the Rapid Response Service of the European Committee on Democracy and Governance (CDDG) of the Council of Europe, feedback was collected from 17 countries and the relevant [Report](#) was prepared (Belgium, Bulgaria, Czech Republic, Denmark, France, Georgia, Germany, Greece, Moldova, Poland, Portugal, Romania, San Marino, Slovak Republic, Slovenia, Spain, Sweden);
- In collaboration with other international actors², 11 detailed country case reports were prepared in September 2021 (focusing on Albania, France, Germany, Greece, Italy, Latvia, Moldova, Poland, Romania, Slovenia, and Sweden), together with the relevant [Summary](#);
- Six thematic meetings took place in Kyiv between July and September 2021, with different categories of Ukrainian stakeholders. The meetings were held in the format of group interviews (lasting about 2 hours each) and were moderated by a Council of Europe local consultant under the “Chatham House Rule”. The Council of Europe Office in Ukraine made every effort to ensure that participants with different views were present at the meetings;
- A legal analysis on the current situation in Ukraine was carried out.

The Parliamentary Committee asked the Council of Europe to prepare a Policy Advice , which could condense all the findings stemming from these activities and provide suggestions for a course of action to the Ukrainian counterparts.

The present Policy Advice was prepared based on contributions from experts of the Centre of Expertise (national expert Markiyana DACYSHYN and international expert Sorin IONITA) within the framework of the Programme “Enhancing decentralisation and public administration reform in Ukraine”. The document also takes into account the analysis on legal personality

¹ European Parliament resolution of 11 February 2021 on the implementation of the EU Association Agreement with Ukraine ([2019/2202\(INI\)](#))

² The Programme “U-LEAD with Europe: Ukraine – Local Empowerment, Accountability and Development Programme”, and the Swedish-Ukrainian Project “Support to Decentralisation in Ukraine”

of local public entities in the light of the European Charter of Local Self-Government and the current debate in Ukraine on this issue, prepared by Prof Dr Nikolaos CHLEPAS, member of the Group of Independent Experts on the Charter under the Congress of Local and Regional Authorities of the Council of Europe (attached).

2. General Remarks

In 2014 a significant process of decentralisation and territorial consolidation was launched in Ukraine to address the problem of administrative fragmentation, in particular in rural areas, by stimulating amalgamation. This has led in subsequent years to the creation of larger municipalities – new *hromadas* – mainly on a volunteer basis and to the development of inter-municipal cooperation. At the same time, the reforms have increased the degree of decentralisation in the country by shifting power from upper to lower tiers of sub-national governments³: municipalities have taken powers from the subregional tier making new *hromadas* more important compared to the old *rayons*. The reforms are still under way and Ukraine should be encouraged and supported in continuing them, being one of the few countries in Europe which has undertaken such an ambitious agenda.

On the other hand, a certain ambiguity persisted regarding the legal status of local self-governments – whether they have legal personality or not – which puts Ukraine in contrast with the vast majority of European countries. There is broad convergence on the continent, as it resulted from the cases presented to the Ukrainian Parliamentary Committee on Local Self-Government, that either a “community” or an “administrative territorial unit” (hereinafter ATU) is an entity with legal personality, whether on the basic tier (municipalities) or the intermediary ones (districts, regions). “Community” is undoubtedly a very different concept than that of “administrative territorial unit” but they both suppose the existence of a singly legal persona, of which the organs of authority are the representatives, with no separate legal personality; they therefore have similar legal implications and will be referred to henceforth as ATU. In this model the respective elected bodies (a mayor, council, president of a region) as well as their executive authorities only represent their ATUs, but do not have separate legal personality. They act exclusively in the name and on behalf of the legal person to which they belong. This model is the result of a long history of administrative evolution – it may be explicitly codified in Constitutions and laws or based on the legal doctrine as it emerged from court decisions – or the systemic reforms implemented after 1990 in most ex-Communist countries. In contrast, aside from the countries based on common law system (Ireland, United Kingdom), only the Russian Federation grants legal personality not to the “community” or the “administrative territorial unit” but to the local authority.

It should be noted that about the same number of countries in Europe have decided to solve the issue of legal personality at local level either in their Constitution or in their legislation.

According to the 2020 [Commentary](#) on the explanatory report to the European Charter of Local Self-Government, local authorities are commonly understood as territorial public entities endowed with their own legal personality. However, the Commentary also clarifies that the concept of “local authorities” cannot be strictly defined by the Charter as this

³ There are three tiers of local self-government in Ukraine: community or ‘*hromada*’ (the basic tier), district or ‘*rayon*’ (subregional tier), and region or ‘*oblast*’.

depends largely on each Party's political and constitutional traditions and relevant legislation on the subject. This means that the Charter adopts a flexible approach that has to be applied to its interpretation in relation to the issue of legal personality of local authorities in various countries. As concluded in the analysis on legal personality of local public entities in the light of the Charter and the current debate in Ukraine on this issue prepared by Prof Dr Nikolaos CHLEPAS, member of the Congress Group of Independent Experts on the Charter, "the current legal status of *hromadas* in Ukraine and the legal personality of Councils keeps the letter of the Charter and does not constitute a violation of its provisions and especially of article 3".

The Council of Europe considered in its reply⁴ to the Chair of the Ukrainian Parliamentary Committee on State Building, Local Self-Government, Regional and Urban Development that the Charter is flexible in respect of the actual subject of legal personality. Therefore, the current situation in Ukraine is not, *stricto sensu*, against the Charter.

In Ukraine the current arrangement is the result of the continuation of the practice to award legal personality to various institutions of local government, not to local community⁵. This system has consolidated over time and became anchored in numerous pieces of general and sector-specific legislation, including those which refer to the status of the Autonomous Republic of Crimea. At the same time, as it resulted from consultations and many expert opinions, the Ukrainian Constitution and legislation provide certain elements of legal personality at local level. While a *hromada* as such is not registered as a legal entity, it has nevertheless rights and obligations under the civil law which point in this direction. The decision of the Supreme Court of 7 October 2020 – based on the legal framework currently in force - indicates that the "*recognition of a territorial community's legal capacity by virtue of a direct provision of the Civil Code of Ukraine excludes the need to obtain such status through its state registration as a legal entity*".

According to positions expressed by the local actors during the consultations, there seems to be no special problems in practice with the functioning of this hybrid model of legal personality at local level. Reports and the opinions expressed during consultations suggest that even in "hard" areas of policy, such as property rights or litigation in courts, there are no serious obstacles posed by the lack of a clear status in the way local governments operate. This is remarkable especially in view of the large number of transactions concerning the transfer of property, land and other assets from State or upper-level local government (subregional level) to municipal (*hromada*) ownership which have taken place since the decentralisation reform began. What is more, the real local autonomy and, hence, the success of the Ukrainian territorial reform depend on other elements too, such as the proper and clear assignment of attributions by tiers of subnational government, the adequacy of the resources available to these local governments in order to perform their functions, and the clarification of the role of intermediary tiers, primarily the *rayons*. In particular, the small towns and villages continue to depend too much financially on transfers from the State budget.

⁴ The reply was included in a letter signed by the Director General of Democracy after consultation with representatives of the Venice Commission and of the Congress of Local and Regional Authorities.

⁵ According to the Constitution of Ukraine, administrative-territorial units are Autonomous Republic of Crimea, *oblasts*, *rayons*, cities, urban *rayons*, settlements and villages (Article 133); *hromada* is not an ATU. Meanwhile, recent proposals for Constitutional amendments revisit this Article and define a *hromada* as an ATU.

3. Conclusions

The participants in the consultations held with the support of the Council of Europe welcomed the efforts to launch a serious and informed dialogue on the issue of legal personality of the Ukrainian local communities. The Ukrainian Parliamentary Committee on Local Self-Government and the Ministry for Communities and Territories Development were fully committed to this dialogue, which is a proof of the strong local ownership of this effort. This informed conversation started from the reality that the current hybrid arrangement emerged gradually over the past three decades. The territorial communities do not possess explicit legal personality, which creates ambiguity about their status. On the other hand, the laws of Ukraine expressly entitle the State, the Autonomous Republic of Crimea, and territorial communities to be direct owners of property, and parties to civil and economic relationships as well as court proceedings. These elements are already enacted in numerous provisions of the legislation of Ukraine.

This system is different from what is found in most European countries but has a certain degree of functionality: there is apparently no major obstacle for guaranteeing the rights of citizens, the integrity of the local public property system, or against having functional budgets, although the conflicts of competences between institutions in the same municipality remain a possibility.

National security concerns, understandably a source of preoccupation in the current context, do not seem to depend on the existence of the explicit legal personality of territorial communities, which is also proven by examples of other European countries with territorial conflicts, which were unrelated to them granting legal personality to their municipalities. Concerns may arise that the issue could be used as a tool in the ongoing hybrid war, by creating “fake *hromadas*” through the community registrars. However, it is necessary to note that the previous attempts of abuse took place under the current legal framework, where *hromadas* do not have legal personality. The provision of legal personality via a binding law would eliminate this risk. However this assumption was not shared by the Ukrainian stakeholders during the consultations.

Europe itself does not have an agenda to align the national structures of territorial organisation; a lot of variation exists in this respect. There are even differences from one country to another in the meaning of the term “municipality”, as the set of country cases collected attests. The only principles which are crucial and constant are those provided in the European Charter of Local Self-Government, which lay down the standards for protecting the rights of local governments against abuse from upper-level authorities.

However, the generalised European model, followed by the vast majority of the Council of Europe member States, is one where either the local community or the “administrative territorial unit” (and not the organs of authority - councils or their executive bodies) is the legal entity and the subject of legal rights and responsibilities. Although this is not explicitly an obligation under the Charter, which respects the situations, traditions and perspectives of different countries, the model of granting legal personality to municipalities was chosen by the vast majority of European countries, both those with old and more recent traditions of decentralisation. This is a good indication about how things operate on the continent, by and large.

The ongoing administrative-territorial reform which created new *hromadas* (and new *rayons*) yielded positive results, is a step forward towards modern local governance and it represents a good platform for future improvements. The fine tuning still to be carried out relates in most part to the provision of adequate resources to match responsibilities, protecting the space for autonomous decision with the engagement of local residents, and creating a fair and transparent system of administrative supervision.

In the same vein, the reform of legal personality at local level – granting the legal personality to territorial communities – would be a positive development. The reform would harmonise the situation of legal personality in Ukraine with the general European model and with the practice of the vast majority of European countries, where legal personality of municipalities is considered as an essential element of sustainable local self-government, based on rights and obligations of municipalities (rather than their bodies, whose personal composition is by nature changeable).

Accordingly, the provision of legal personality to municipalities would protect the concept of local self-government, clarify its internal structure, relations with citizens and with the central authorities, and improve democratic governance. In the long term, it could induce a change of mindset and reinforce the idea that citizens are at the centre of local government. It would also simplify the relation between a council and a mayor and the issue of representation (in particular, but not limited to, representation in Court). It would also represent a welcome legal clarification of a practice which is presented in various ways in different pieces of legislation. The case for this change is presented extensively in a number of analytic reports endorsed by Prof Dr Georg MILBRADT, Special Envoy of the German Government for decentralisation, good governance and public service reforms in Ukraine, and sent to the Ukrainian authorities. Conversely, the currently existing numerous legal persons within municipalities, each possibly looking after their own interests, may favour conflicts of competence, lack of transparency, and mismanagement of funds.

At the same time, the change would require a long and careful work of amending various pieces of legislation adopted after the 1996 Constitution and the organic Law on Local Self-Government (1997), and a transition period for the separate regulation of legal relationships established prior to the change. It presupposes a political and administrative effort, and probably significant public expenditure⁶. It is not clear at this point whether constitutional changes are necessary in order to implement the legal personality reform, only a subsequent decision of the Constitutional Court would clarify this aspect for good. If amendments to the Constitution are indeed needed, the Ministry of Territories and Communities Development of Ukraine suggests that over 15 articles across several sections of the fundamental act should be amended, including those which require approval at a national referendum.

⁶ According to the Ministry of Territories and Communities Development of Ukraine, public expenditures are needed to merge/eliminate numerous legal persons within a municipality, and to reformat operating and payment systems of all public authorities in accordance with the public budget regulation changes, resulting from the legal personality reform. If constitutional amendments of Chapters I and III are considered necessary, more than UAH 2 billion (approximately EURO 64.5 million) will be needed to organise and hold a national referendum.

4. Recommendations

1. The reform of legal personality at local level would be useful and welcome, as it provides for a clear and transparent status of municipalities and offers considerable democratic advantages. However, the current challenges to the success of the on-going decentralisation reform in Ukraine make it less than urgent. Further research, consultations and discussions, particularly at local level, should be promoted to explore and explain the full implications of the change in *hromada* status and identify appropriate timing and cost of the reform.
2. The main priority for Ukraine today is to strengthen the real local autonomy of the newly created local governments by finalising the systemic reforms on which it embarked in 2014-15, by dealing with the process of amalgamation and its consequences, sorting out relations between new *hromadas*, *rayons*, *oblasts* and the State, and ensuring adequate resources at all levels of local government so that they are able to perform their functions properly. The transposition in practice of the principles of the European Charter of Local Self-Government is a function of how well this process is completed. The Ukrainian decision-makers, and in particular the Parliamentary Committee on Local Self-Government and the Ministry for Communities and Territories Development, are fully aware of these urgent tasks. In parallel, the system of legal and administrative supervision over local authorities' acts should be clarified and strengthened, to ensure enforcement of national laws and predictability at local level, and at the same time guarantee the autonomy of local decision-making within the space provided by the Constitution and the laws, in parallel with a better definition of the organs of local state administration. These aspects are addressed in the draft Law on Local State Administration (#4298) and sufficiently commented on in the Council of Europe opinion [CEGG/LEX\(2020\)5](#).
3. In parallel with promoting/putting in place the concept of legal personality, other measures should be taken to put a greater emphasis on making more transparent decisions and resources at local level, empowering local residents, promoting ethics and integrity among decision-makers and civil service, enforcing existing laws and creating local codes of conduct.
4. The issue of local public property should be clarified. In particular, the property which is today assigned to the organs of state administration, and which is used in performing a local attribution, should be reassigned to the proper tier of local government which delivers the respective function. It is important to ensure uniformity of local public property records in the State registry, ensuring the *hromada* (not local authorities) is the only registered owner (as provided by the law), and update the regulation regarding the common property of communities. All these should happen irrespective of the fact that the current hybrid system of legal personality at local level is maintained or not.
5. Account taken of the specific situation of Ukraine and its security concerns, it would be reasonable to limit the scope of the reform, for the time being, only to the level of *hromadas*, and not to the intermediate levels of self-government (*rayons* and *oblasts*).

6. International experience shows that a number of countries have decided to safeguard legal personality for municipalities explicitly at the level of the constitution, others considered it sufficient to set it out at the level of ordinary legislation. On the one hand, safeguarding this concept in the constitution would have the advantage of linking it with other fundamental features of local self-government. On the other hand, knowing how difficult it is to agree upon the constitutional amendments in Ukraine and organise and pass a referendum, it could be more feasible to put this concept in place in the ordinary/organic legislation. The decision should be made by the Ukrainian legislator, taking into account the constitutional process in the country and the benefits expected, weighted against the administrative burdens and costs. In any case the constitutional reform should not close the door to the reform of the legal personality.

5. Appendices

Annex I. List of the six thematic meetings, programme and list of participants

Annex II. Summary of findings of six thematic consultations on legal personality at local level in Ukraine

Annex III. Council of Europe Report on 17 countries (prepared in co-operation with the European Committee on Democracy and Governance, CDDG, through the mechanism of its Rapid Response Service)

Annex IV. Summary report on the 11 detailed country cases

Annex V. Analysis report on legal personality of local public entities in the light of the European Charter of Local Self-Government and the current debate in Ukraine on this issue, prepared by Prof Dr Nikolaos CHLEPAS, member of the Group of Independent Experts on the Charter under the Congress of Local and Regional Authorities of the Council of Europe

List of the six thematic meetings, programme and list of participants

On 7 April 2021 Mr Andriy KLOCHKO, Chairperson of the Parliamentary Committee on State Building, Local Governance, Regional and Urban Development sent an official request to the Council of Europe asking for comprehensive support on issues of legal personality of territorial communities in 2021, aiming at the development of recommendations for the legal approach of the Committee and other Ukrainian stakeholders.

In response, the Council of Europe moderated and coordinated various types of relevant activities within the framework of the Programme “Enhancing Decentralisation and Public Administration Reform in Ukraine”. In particular, six thematic consultations took place in July and September 2021 in Kyiv, namely:

- three meetings on practical aspects of the current legal personality model at the local level in Ukraine (on 2 July, 7 July and 12 July) with different categories of the Ukrainian stakeholders (please refer below);
- meeting on litigation issues related to territorial communities and local self-government authorities (on 14 September);
- meeting on the legal personality of territorial communities in the context of the preparation of amendments to the Constitution of Ukraine (on 28 September);
- meeting on challenges to national security and territorial integrity that may be caused by a change in the legal personality model at the local level (on 28 September).

Different categories of Ukrainian stakeholders attended the consultations (please refer to the lists below), representing the following institutions:

- Committee of the Verkhovna Rada of Ukraine on State Building, Local Governance, Regional and Urban Development (all the meetings)
- Committee of the Verkhovna Rada of Ukraine on Legal Policy (2 July and 28 September)
- Supreme Court (14 September)
- Security Service of Ukraine (28 September)
- Office of the President of Ukraine (7 July and two meetings on 28 September)
- Secretariat of the Cabinet of Ministers of Ukraine (2 and 7 July)
- Ministry for Communities and Territories Development (all the meetings)
- Ministry of Justice (2 July)
- Ministry of Internal Affairs (28 September)
- State Service of Geodesy, Cartography and Cadastre (7 July)
- Local government associations of national status (12 July and two meetings on 28 September)
- Individual local authorities (12 July, 14 and 28 September)
- National Bar Association (2 July, 14 and two meetings on 28 September)
- Legal Reform Commission’s working group for the preparation of amendments to the Constitution of Ukraine (28 September)

The Council of Europe Office in Ukraine made every effort to ensure that participants with different positions were present at the consultations.

The meetings were held in the format of a group interview (lasting about 2 hours each) and were moderated by a Council of Europe local consultant under the “Chatham House Rule”.

Thematic consultations’ questions for discussion were arranged in blocks depending on the target audience. Namely they were:

- A. For the three meetings on *practical aspects of the current legal personality model* at the local level in Ukraine (on 2 July, 7 July and 12 July) with different categories of the Ukrainian stakeholders:
 1. What kind of issues do territorial communities or local self-government bodies encounter in acquiring / exercising municipal property rights (rights to land plots in particular)?
 2. Are there any problems with representation of the interests of local communities in court? If so, what are they?
 3. What are the opportunities and / or risks of obtaining / not obtaining the legal entity status by territorial communities?
 4. Is it possible to strengthen the legal personality of territorial communities without changing their legal status?
- B. For the meeting on *litigation issues* related to territorial communities and local self-government authorities (on 14 September):
 1. Does the existing legal personality of territorial communities create practical issues for them or local self-government authorities in administrative proceedings? Which type of disputes (administrative, economic, or civil) the territorial communities or local authorities are a party to most of the times?
 2. Does the representation of the interests of a territorial community become more complicated as the authorised representatives of the local self-government authority act on its behalf, including in the courts (as participants in proceedings)? If yes, please specify.
 3. Will granting the status of a legal entity to the territorial community as an administrative-territorial unit resolve these issues?
 4. What opportunities and risks may obtaining the status of a legal entity by a territorial community create?
 5. How will granting the territorial community the status of a legal entity affect different types of legal (civil, commercial, administrative) proceedings if the legal status of the State and the Autonomous Republic of Crimea is not changed? How the administrative and property relations as respects the property in AR Crimea are to be exercised?
 6. How will the change in the status of the territorial community (AR of Crimea, the State) affect the implementation of the legal relations that are being disputed in courts or where court decisions are already being executed?
 7. Is it possible to strengthen the legal personality of a community without changing its legal status?
- C. For the meeting on the legal personality of territorial communities in the context of the preparation of *amendments to the Constitution* of Ukraine (on 28 September):
 1. Providing the status of a territorial community as a legal entity in the Constitution. What are the alternatives?

2. Constitutional restrictions with regard to granting the legal entity status to territorial communities.
 3. Does changing the status of territorial communities dictate the need to adjust the legal status of the State and the AR Crimea accordingly? If only the status of territorial communities changes, how would it affect the cooperation between territorial communities and state agencies and the AR Crimea authorities? Particularly, what would be the status of local self-government bodies of territorial communities in the AR Crimea?
- D. For the meeting on *challenges to national security and territorial integrity* that may be caused by a change in the legal personality model at the local level (on 28 September):
1. What are the reasons and grounds for emergence of the fake community movement? What did they do and how did they do it?
 2. Does the change in the status of territorial communities make it necessary to bring the status of the State and the AR Crimea to a similar legal form?
 3. If the status of a legal entity is granted only to territorial communities (but not to the AR Crimea, and not to the State), how will the interaction between territorial communities, the AR Crimea, and the State evolve? In particular, what will be the status of local self-government authorities and executive authorities in the AR Crimea?
 4. Is it appropriate to measure the amount of expenditures that will need to be carried out at the expense of the public budget to ensure appropriate transformations in the event of changing the status of territorial communities (AR Crimea, the State) and reformatting the local government system and the executive branch, as well as the budget system of Ukraine?
 5. How to minimise risks to national security as a result of introducing the status of legal entity for territorial communities?

Parliament of Ukraine

1. Mr Andriy KLOCHKO, Member of the Parliament of Ukraine, Chairperson of the Parliamentary Committee on State Building, Local Governance, Regional and Urban Development
2. Mr Andriy KOSTIN, Member of the Parliament of Ukraine, Chairperson of the Parliamentary Committee on Legal Policy Issues
3. Mr Oleksandr ALIKSIYCHUK, Member of the Parliament of Ukraine, Member of the Parliamentary Committee on State Building, Local Governance, Regional and Urban Development
4. Mr Vitaliy BEZHIN, Member of the Parliament of Ukraine, Chairperson of the Parliamentary Subcommittee on administrative and territorial structure and local self-government, Parliamentary Committee on State Building, Local Governance, Regional and Urban Development
5. Ms Larysa BILOZIR, Member of the Parliament of Ukraine, Chairperson of the Parliamentary Subcommittee on Administrative Services and Procedures, Parliamentary Committee on State Building, Local Governance, Regional and Urban Development

6. Mr Dmytro HURIN, Member of Parliament of Ukraine, Member of the Parliamentary Committee on the Organisation of State Power, Local Self-Government, Regional Development, and Urban Planning
7. Mr Oleksandr KACHURA, Member of the Parliament of Ukraine, Deputy Chairperson of the Parliamentary Committee on State Building, Local Governance, Regional and Urban Development
8. Mr Oleksandr KORNIENKO, Member of the Parliament of Ukraine, Chairperson of the Parliamentary Subcommittee on the Organisation of State Power, Civil Service, Service in Local Self-Government Bodies, State Symbols and Awards, Parliamentary Committee on State Building, Local Governance, Regional and Urban Development
9. Mr Viacheslav RUBLIOV, Member of the Parliament of Ukraine, Chairperson of the Sub-committee on Regional Policy and Local Budgets of the Verkhovna Rada of Ukraine Committee on State Building, Local Governance, Regional and Urban Development
10. Ms Olha SOVHYRIA, Member of Parliament of Ukraine, Deputy Chairperson of the Parliamentary Committee, Chairperson of the Subcommittee on Political Reform and Constitutional Law of the Parliamentary Committee on Legal Policy
11. Mr Dmytro CHORNYI, Member of the Parliament of Ukraine, Member of the Parliamentary Committee on State Building, Local Governance, Regional and Urban Development
12. Ms Angela MALYUHA, Head of the Secretariat of the Parliamentary Committee on State Building, Local Governance, Regional and Urban Development
13. Mr Yuriy HARBUZ, Deputy Head of the Secretariat of the Parliamentary Committee on State Building, Local Governance, Regional and Urban Development
14. Mr Mykhaylo DIADENKO, Assistant-consultant to Mr Andriy KLOCHKO, Member of the Parliament of Ukraine, Chairperson of the Parliamentary Committee on State Building, Local Governance, Regional and Urban Development
15. Mr Artem ZAITSEV, Assistant-consultant to Mr Oleksandr KORNIENKO, Member of the Parliament of Ukraine, Chairperson of the Parliamentary Subcommittee on the Organisation of State Power, Civil Service, Service in Local Self-Government Bodies, State Symbols and Awards, Parliamentary Committee on State Building, Local Governance, Regional and Urban Development

Office of the President of Ukraine

16. Ms Al'iona STUDENETSKA, Head of the Expert Group on Professional Development, Directorate for Regional Policy

Legal Reform Commission, Working Group on preparation of proposals for amendments to the Constitution of Ukraine

17. Mr Anatoliy ZAYETS, Head of the Working Group

Secretariat of the Cabinet of Ministers of Ukraine

18. Ms Svitlana VLADCHENKO, Deputy Head of the Judicial Monitoring Sector, Legal Department

19. Ms Mar'iana DZVINNYK, State Expert of the Expert Group on the Issues of Territorial Organisation of Power and Electoral Processes, Directorate on Coordination and Evaluation of Regional Policy

Ministry for Communities and Territories Development of Ukraine

20. Mr Viacheslav NEHODA, Deputy Minister
21. Ms Oksana PAVLIUK, Head of the Expert Group for Local Self-government Development, Directorate on Local Self-government and Territorial Organisation of Power
22. Ms Vira KOZINA, Lead Expert of the Expert Team on Legislative Support for Local Self-government Reform under the Ministry, Consultant of the Programme "Enhancing decentralisation and public administration reform in Ukraine"

Ministry of Justice of Ukraine

23. Mr Oleksandr BANCHUK, Deputy Minister

State Service of Ukraine on Geodesy, Cartography and Cadastre

24. Mr Ivan SMILYI, Deputy Head of the State Service

Ministry of Internal Affairs of Ukraine

25. Mr Yuriy TKACHUK, Deputy Head of the Department for Protection of Public and State Interests of the National Police of Ukraine

Security Service of Ukraine

26. Mr Yevhen RYBACHUK, Officer of the Security Service of Ukraine

Representatives of local self-government and their associations

27. Mr Serhiy CHERNOV, President of the Ukrainian Association of District and *Oblast* Councils
28. Mr Oleksandr SLOBOZHAN, Executive Director of the Association of Ukrainian Cities
29. Ms Valentyna POLTAVETS, Executive Director of Association of Amalgamated Communities
30. Mr Serhiy ZAMIDRA, Deputy Head of the All-Ukrainian Association of Communities
31. Mr Andriy GOLDOVSKYI, Deputy Head of the Executive Directorate of the All-Ukrainian Association of Communities
32. Mr Volodymyr MIAGKHOHOD, Director of the Central Office on Decentralisation, Association of Ukrainian Cities
33. Mr Mykola TITOV, Expert of the Ukrainian Association of District and *Oblast* Councils
34. Mr Serhiy SHEVEL, Lawyer, legal officer of the Association of Amalgamated Communities
35. Mr Yuriy BOVA, Trostianets City Mayor (Sumy *oblast*)
36. Mr Roman DMYTRIV, Hora Village Mayor (Kyiv *oblast*)

37. Mr Oleksiy KRIVOKON, Deputy Mayor of Chasovoyarsk (Donetsk *oblast*)
38. Mr Mykhailo NETIAZHUK, Fastiv City Mayor (Kyiv *oblast*)
39. Mr Oleksii RIABOKON, Deputy Berezan' City Mayor (Kyiv *oblast*)
40. Mr Gryhoriy RUDIUK, Nova Borova Settlement Mayor (Zhytomyr *oblast*)
41. Mr Maksym TARAN, Head of the Legal Department, Huliay-Pole City Council (Zaporizhzhia *oblast*)

Supreme Court of Ukraine

42. Ms Myroslava BILAK, Judge of the Administrative Court of Cassation of the Supreme Court
43. Mr Volodymyr KRAVCHUK, Judge of the Administrative Court of Cassation of the Supreme Court

National Bar Association

44. Mr Valentyn GVOZDIY, Vice-President of the Ukrainian National Bar Association; the Bar Council of Ukraine, Lawyer
45. Mr Yuriy BAUMAN, Lawyer, Chairman of the Committee on Administrative Law and Procedure, Deputy Chairman of the Committee on Criminal Law and Procedure
46. Ms Hanna UDOVENKO, Assistant to Vice-President of the Ukrainian National Bar Association Mr Valentyn Hvozdiy

Council of Europe Office in Ukraine and other invitees

47. Mr Daniel POPESCU, Head of Department of Democracy and Governance, Directorate General of Democracy II
48. Ms Alina TATARENKO, Head of Democratic Governance Division, Directorate General of Democracy II
49. Ms Olena LYTVYENKO, Deputy Head of the Council of Europe Office in Ukraine
50. Ms Olga SHEVCHUK, Programme Manager, Programme "Enhancing decentralisation and public administration reform in Ukraine"
51. Mr Cesare COLOMBO, Senior Project Officer of the Centre of Expertise for Good Governance, Directorate General of Democracy II
52. Ms Kateryna SASINA, Project Officer, Programme "Enhancing decentralisation and public administration reform in Ukraine"
53. Anna DMYTRUK, Assistant, Programme "Enhancing decentralisation and public administration reform in Ukraine"
54. Sorin IONITA, Council of Europe Consultant
55. Mr Markiyan DACYSHYN, Consultant of the Programme "Enhancing decentralisation and public administration reform in Ukraine", moderator
56. Ms Olena BOYKO, Independent expert
57. Mr Vasyl POLISHCHUK, Adviser on legal issues, Programme "U-LEAD with Europe" (observer)

Summary of findings of six thematic consultations on legal personality at local level in Ukraine

The Council of Europe has moderated and coordinated six thematic consultations, which took place in July and September 2021 in Kyiv.

Different categories of the Ukrainian stakeholders attended the meetings (please refer to Annex I). The Council of Europe Office in Ukraine made every effort to ensure that participants with different positions were present at the consultations.

The meetings were held in the format of a group interview (lasting about 2 hours each) and were moderated by a Council of Europe local consultant under the “Chatham House Rule”.

A pre-defined list of questions for the discussion was shared before each consultation (please refer to Annex I).

Based on the views voiced by the Ukrainian stakeholders, the key findings are as follows.

a) Participants welcomed the Council of Europe efforts to launch a professional dialogue on the issue of legal personality of local communities in Ukraine

The dialogue provided careful and inclusive consideration of the potential legal personality reform feasibility, concept and risks as well as identification of challenges for local self-government.

Conversely, one participant pointed out that any new idea has to pass three stages: from complete opposition to total support. Having said that, by some estimates, the discussion on the legal status of communities is still in its first stage or may have even become somewhat “toxic”.

The consultations were instrumental in reducing room for speculations on the legal personality concept. It should be noted that the idea of “community registration as a legal entity” had assumed a negative meaning in the public discourse in Ukraine long before the legal personality reform was put on the agenda. The reason is a “fake community virus”, spread during the recent decade by self-proclaimed community registrars.

b) Ukrainian Constitution and legislation provide a legal personality model at local level. Although a community (*hromada*) is not registered as a legal entity, it is vested with civil rights and obligations

Participants claimed that current legal personality status at local level is sufficient and can be confirmed by the daily practice of exercising the rights and legitimate interests of both local residents and local self-governments.

The Constitution and organic laws clearly establish that the community (not the bodies of local self-government) is the main subject of local self-government. The Civil Code, the Economic Code, other codes (i.e. the Land Code, the Forestry Code, etc.), as well as every code of procedure and every organic law recognise a community as an “independent actor”, i.e. the sole entity that has the capacity to exercise property rights and other legal competences at the local self-government level. In addition, many communities in Ukraine adopted their Charters of community.

The jurisprudence confirms this statement. In Ukraine, according to the attendees, the community is an independent participant in legal proceedings. This is evidenced, in particular, by the recent practice of litigation on appeal of voluntary (over 200 cases) and 'compulsory', by decision of the Government, (over 130 cases) amalgamation of communities. In these categories of cases, it is the community (not the local self-government body) that is the subject of the appeal.

A review of the Supreme Court's case law since 2016 regarding a number of relevant cases it considered, points as well to the Court recognising the legal personality of communities through appeals to local self-government authorities and decisions in favour of the relevant communities. Consequently, the Supreme Court decision on 7 October 2020 concluded that "recognition of a territorial community's legal capacity by virtue of a direct provision of the Civil Code of Ukraine excludes the need to obtain such status through its state registration as a legal entity".

The case law of the Constitutional Court of Ukraine, whose decisions are a source of law in Ukraine, is also interpreting the community as an entity endowed with a fairly broad civil and economic capacity.

Some participants assumed that the Ukrainian legislation establishes, in certain aspects, even broader powers for a community than in some Council of Europe member states, where communities are legal entities.

Meanwhile, one attendee claimed that the 1996 Constitution solidified "half-and-half local self-government" (i.e. not comprehensive and not having jurisdiction over the entire territory, etc.), which also has been reflected in the organic Law. Besides, local self-government in Ukraine is yet to attain the statutory level of independence.

c) There are few if any problems, specifically caused by the current legal personality model in Ukraine, affecting local self-government, esp. in the field of a) property rights; b) litigation review and appeals

None of the participants mentioned any related issues in the abovementioned fields that derive from the current model of legal personality in Ukraine. The Supreme Court has reviewed, in the light of the cases involving amalgamated territorial communities, the local self-government reform in Ukraine and found no problems relating to the existing status of the community that would prevent effective protection of the rights of territorial communities and their individual members.

This is especially noticeable given the experience of a large number of transactions concerning the transfer of property, land and other assets from state and upper-level local self-government (subregional tier) to municipal ownership, which have recently taken place in Ukraine as a result of completion of the voluntary amalgamation of communities.

Courts of Ukraine develop legal positions and doctrines (i.e. fair process and good governance doctrines) to ensure that the rights and interests of both the individual and the community in administrative proceedings are protected, to restrain the arbitrariness of power and discretion of the authorities, proceeding from the understanding that local self-government is a special category of power exercised by the people (under Article 5 of the Constitution).

d) Transformation of the legal personality model in Ukraine will require large scale changes to the legislation as well as a special regulation for the transition period

The historical context is important for understanding the Ukrainian case. In post-communist European countries, local communities were granted their legal personality status, along with the State, as part of the sweeping change of the entire system of national law (mostly in the late 1980s – early 1990s). Ukraine, on the contrary, did not undertake radical changes in the 1990s, particularly when the Constitution (1996) and organic laws (especially the Law on Local Self-Government, 1997) were adopted. These acts, however, clearly recognised the community as the key subject of local self-government as well as its legal personality. As time passed, the Ukrainian legislation naturally evolved to fully adopt Europe’s local self-government model, thus completely doing away with the Soviet heritage.

Granting the legal entity status to a community amid the fully developed legal system would require long and painstaking work on making amendments to multiple acts of legislation, as well as a transition period for the separate regulation of legal relationships established prior to the change. The reform will also entail significant public expenditure.

Participants did not reach an agreement whether the Constitutional changes are necessary to implement the legal personality reform. As an alternative, adopting a relevant law or a judgment of the Constitutional Court of Ukraine might be a solution.

If the reform entails amendments to the Constitution, they have to deal with the articles across several sections of the Constitution, including those that may only be amended through a nationwide referendum (namely Sections I, III, and XIII).

Inevitably, the reform will lead to amendments of several hundred laws of Ukraine, regulating various aspects of legal personality, as well as the mechanism of representation of the interests of the state and communities by public authorities. The entire system of public authorities and local self-government, and the procedure of their interaction will also have to be transformed. Subsequently, all public authorities are to be reorganised.

It should be noted that a simultaneous review of the legal status of the Autonomous Republic of Crimea and the State will be needed. Both have the same civil and economic legal personality as a community. The Constitution and organic Laws read these three terms (a community, AR Crimea, and the State) in a row, “separated by a comma”. The reform agenda will also likely cover the review of legal regime of ownership of the Autonomous Republic of Crimea, which is established by individual laws.

In order to strike a balance between the interests of the communities and the State, the introduction of a robust system of administrative supervision over local self-

government bodies might be needed (unlike the “soft” model of ensuring legality, provided for in the draft Law #4298)¹.

e) The concept and the road map of the legal personality reform should be precisely elaborated, providing stakeholders with understanding and motivation (including medium term benefits) in order to succeed in the current turbulent circumstances

When discussing the viability and modality of the community legal personality model reform, it is important to clearly determine the purpose of such changes, identify specific problems that need to be addressed, and/or benefits that the reform will bring to people and communities. So far, even after six thematic meetings, the answers to these questions are still not clear for the vast majority of national stakeholders.

Meanwhile, the importance of the proposed reform in the context of the European integration of Ukraine was not questioned during the consultations. It was suggested to consider it as a kind of “de-communisation” of the worldview and the *modus operandi* of local self-government institutions, looking up to “higher-ranking” bodies rather than the local residents. According to several participants, unfortunately, the “bottom – up” orientation of individual local self-government authorities has not been totally eradicated since the replacement of the Soviet model of *local councils of people's deputies* in Ukraine by the “*hromada*” (community) model in 1996.

Given the on-going administrative-territorial transformation in Ukraine (new communities, established in October 2020, are busy with the property transfers and redistribution of functions; new *rayons* are in their infancy), as well as the limited implementation capacity, the legal personality reform timing is crucial. During current days it would inevitably add turbulence to the complicated situation, unhinge the public administration system and even disrupt the balance of power in Ukraine.

This is especially dangerous in the context of the Russian military aggression, as well as of the on-going efforts of the *communities' registrars*, which are fuelled externally. Therefore, national security concerns should be addressed as well. There is no reason to expect that the security aspect will lose its relevance in the future, after the legal personality model change.

Besides, when revising the legal status of the Autonomous Republic of Crimea, one should take into account the lawsuits at the international courts (in particular at the European Court of Human Rights) filed by Ukraine against Russia for the occupation damages compensation. Otherwise, the reform might lead to unexpected developments in this context.

On the other hand, one participant suggested that establishing the legal entity of the Autonomous Republic of Crimea and transferring ‘*ownership titles*’ of property that was once owned by the State and seized during the occupation may help with restitution of such property following Crimea’s de-occupation.

The future reform concept shall address the participants’ questions regarding a new community legal status (i.e. will it be a legal entity of public law or will it be a separate

¹ The draft Law “On Amendments to the Law “On Local State Administrations” and some other legislative acts of Ukraine on reforming the territorial organisation of executive power in Ukraine”

category, apart from legal entities of public and private law?). Considering Article 140 of the Constitution of Ukraine definition of a community as a collective of its residents (unlike the European municipality referring to both the territory and its residents), granting a legal personality to an imprecisely identified group of individuals would raise a number of collisions and doubts, particularly with regard to compliance with the principle of legal certainty. Also, the legal personality would imply a community civil right to merge and/or to split, which might bring new challenges.

According to one participant, an answer to some concerns is setting special procedures for establishing a community (i.e. a legal entity is established by the Law and registered by the Ministry of Justice), and for communities' merging/splitting, as well as introducing effective state oversight over decisions of local self-government bodies.

f) There is a possibility to strengthen the legal personality of a community in Ukraine without changing its legal status

Most participants stressed the need to strengthen the current model of legal personality of communities in several areas, which can be achieved through amendments to laws and regulations.

The mentioned options *inter alia* included: ensuring the residents' participation in the decision-making (adopting a draft Law On Local Referendum (#5512)); reducing the discretion of the local officials/authorities, ensuring the uniformity in the law enforcement throughout Ukraine (draft Law On Administrative Procedure (#3475)); regulating the limits of the judiciary interference with the local self-government competence in administrative proceedings; changing the electoral legislation in favour of the majority election system to strengthen the connection between the voters and local councillors; introducing a new instrument of administrative oversight (draft Law On Local State Administrations (#4298)); supporting the development of self-regulatory organisations of residents; improving legislation on common property rights of territorial communities.

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CENTRE OF EXPERTISE FOR GOOD GOVERNANCE

**Strasbourg, 13 September 2021
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**Rapid Response Service no. 44
Ukraine: Questionnaire on legal personality at local level**

The present Report was prepared by the Centre of Expertise for Good Governance,
Department of Democracy and Governance of Directorate General II – Democracy

Introduction

Following the request of the Ukrainian Specialised Parliamentary Committee on Local Self-Government, the Council of Europe is providing extended and comprehensive support on the issues concerning legal personality at local level in Ukraine. The present Report was prepared by the Centre of Expertise for Good Governance, Department of Democracy and Governance of Directorate General II – Democracy in the framework of the Programme “Enhancing decentralisation and public administration reform in Ukraine”.

The principle of a legal personality reform at local level has been discussed among Ukrainian stakeholders in recent months in the context of the preparation of (i) a new version of the basic law on local self-government and (ii) Constitutional amendments on decentralisation. The European Committee on Democracy and Governance (CDDG) was asked by the Ministry for Communities and Territories Development to collect information from the Member States through a short questionnaire circulated by its Rapid Response Service. Feedback was collected from the following 17 countries: Belgium, Bulgaria, Czech Republic, Denmark, France, Georgia, Germany, Greece, Moldova, Poland, Portugal, Romania, San Marino, Slovak Republic, Slovenia, Spain, Sweden.

Legal personality at the local level

All the countries responded that at local level the administrative territorial unit has legal personality.

Legal status of the State

The State has legal status in almost every country. In some cases, such as Bulgaria, Denmark and Slovakia, the legal personality is granted to central bodies of state administration (e.g. ministries).

Legal personality of intermediate level authorities

In most of the responding countries, intermediate level authorities (e.g. regions, provinces etc.) have legal personality. Some countries have responded indicating associations of municipalities (e.g. Germany, Portugal).

In a few cases, there are no intermediate level authorities (e.g. Portugal, San Marino, Slovenia). An exception is represented by Georgia, where Administrative Regions do not possess any legal status and are led by officials appointed by the government.

Legal framework

In most of the respondent countries the legal personality/status of the state and the municipalities are enshrined in the Constitution and in some cases by general or special legislation. The main outliers are Belgium, where the legal personality of the state, provinces and municipalities is based on old traditions, and Sweden, where the legal status of the state and municipalities is not stipulated by law.

The application of the concept of “municipality”

The application of the concept of “municipality” varies according to the country in question. In many Council of Europe member states, the term “municipality” defines a territorial unit (e.g. Portugal, Slovakia and Spain) and/or the community (e.g. Poland), and this definition does not encompass the municipal authorities. In Greece the term “municipality” is used for both a territorial entity and its governing structures. There are a few countries (e.g. France and Georgia) where the concept of “municipality” is linked to the local administrative bodies, i.e. mayors and municipal councils, but loosely. In many countries the term “municipality” is used in the everyday language, rather imprecisely, to designate in turn the community, the authority or the list of local services provided by the local authority, hence the direct correspondence with the English language should be made with caution.

Country	Question 1 – Legal personality at the local level	Question 2 - Legal status of the State	Questions 3 and 4 - Legal personality of intermediate level authorities	Question 5 - Legal framework	Question 6 - The application of the concept of “municipality”
Belgium	Municipality	Yes	Regions, communities and provinces	N/A, based on old tradition	N/A
Bulgaria	Municipality	Yes – State bodies	District and territorial administrations, but they are headed by government representatives	Constitution; different Acts	Basic administrative territorial unit
Czech Republic	Municipality	Yes	Regions	Constitution; Civil Code; different Acts	Key attributes: "community of citizens", "territorial unit" and "own property"
Denmark	Municipality	Yes (Ministries and boards)	Regions	Reflected/expressed in the Danish legislation	Territorial unit, the local authority that performs a task, or financing
France	Municipality (<i>Commune</i>)	Yes	Departments, regions, overseas and special statute collectivities	Constitution; General Code of territorial collectivities	<i>Commune</i> : the area managed by the Mayor and the municipal body
Georgia	Municipality	Yes	Administrative Regions have no legal status	Constitution; Code on Local Self-Governance	Basic administrative territorial unit
Germany ¹	Municipalities	Yes (Länder, Federation)	Associations of municipalities	Local Government Law of Rhineland-Palatinate	Territorial community, characteristics: inhabitants, municipal territory
Greece	Municipalities	Yes	Regions	Constitution; Law 3852/2010	Territorial area and the governing municipal authorities
Moldova	Administrative territorial unit	- Yes	<i>Rayons</i> , which have legal personality	Constitution; different Laws.	Localities
Poland	Administrative territorial unit	- Yes	Counties, regions	Constitution	Community
Portugal	Municipality or Parish	Yes	Associations of municipalities or metropolitan zones	Constitution; Law 75/2013 of 12 September	The respective territorial unit
Romania	Administrative territorial unit	- Yes	Counties, which have legal status	Constitution; Administrative Code	Basic administrative territorial unit (not to be confused with <i>municipium</i> = large city)
San Marino	Municipality (<i>Castello</i>)	Yes	There is no intermediate level	The Statutes of 1600; Law no. 158 of 24 September 2020	The <i>Castello</i> is a territorial entity
Slovak Republic	Municipality	Yes (Ministries)	Self-governing regions, but not districts	Constitution; different Acts	Territorial unit
Slovenia	Municipality (<i>občina</i>)	Yes	No Regions established yet	Local Self-Government Act	Territorial unit
Spain	Municipality	Yes	Autonomous Communities, <i>comarcas</i> , <i>mancomunidades</i>	Constitution; Law 7/1985; organic laws	Territorial unit
Sweden	Municipality (<i>Kommuner</i>)	Yes	Regions (<i>Regioner</i>)	N/A	A defined territory and a political and administrative structure

¹ The answers provided refer to one specific German Land (federal state), Rhineland-Palatinate, presenting the legal circumstances of this federal state by way of example.

Annex I: Questionnaire responses

1. **Who has legal personality** (is a legal entity and hence recognised as subject of legal rights and responsibility) in your country **at local level**, **the community** (or “administrative territorial unit”) **or the authority** (council, executive...)?

Belgium

The municipality has legal personality governed by public law.

Bulgaria

Bulgaria is divided into two NUTS-1 regions, six NUTS-2 level planning regions, 28 districts or regions (*oblasti*), including the metropolitan area Sofia-capital, and 265 municipalities (*obshtini*). Districts (*oblast*) are deconcentrated government units at the intermediary level which were created in 1999. They are headed by a district governor, appointed by the Council of Ministers.

According to the **Regional Development Act**, District development councils shall be established in every district and the chairman of the Council is the District governor. The Council’s permanent members will be the mayors of municipalities in the respective district, one representative of the municipal council of each municipality in the district, as well as delegated representatives of the district structures of the representative organisations of employers and employees at national level.

Bulgaria has a single tier of subnational government, composed of municipalities. There are 265 municipalities subdivided into 3 160 sub-municipal units or mayoralties (the information is updated to 31st December 2020). The municipalities (or local communities /or “administrative territorial units”) have granted legal entity status.

Czech Republic

According to the Czech legal system, the municipality has legal personality at local level, but not its internal bodies (municipal council, municipal board, municipal office).

Denmark

In Denmark all administrative authorities are legal personalities with legal rights and responsibility. This includes municipalities, regions and administrative authorities at state level such as ministries and boards.

The local council is the supreme body of the municipality.

France

According to French law, physical persons and legal persons have legal personality.

Legal persons are divided into three categories:

- Legal persons of public law (e.g. the State or local collectivities)
- Legal persons of private law (e.g. example civil society)
- Legal persons of mixed law (e.g. professional bodies)

Thus, local communities are legal persons governed by public law, enjoying legal personality, and having bodies (council, executive body) capable of representing them in legal life. Indeed, for example in the case of a municipality, the municipal council regulates the affairs of the municipality through its deliberations.

By delegation of the municipal council the mayor can be responsible, in whole or in part and for the duration of his mandate, to bring legal actions on behalf of the municipality or to defend the municipality in actions brought against it, in the cases defined by the municipal council.

Georgia

According to the Georgian Constitution (art 74, comma 2), "A self-governing unit is a legal entity under public law" (<https://matsne.gov.ge/en/document/view/30346?publication=36>).

At the local level, the authorised bodies granted by the Georgian Law are only the Mayor (elected) and the City/Municipal Council - "*Sakrebulo*" (elected). Mayors are the elected heads of Municipalities with the relevant powers and responsibilities granted by the Organic Law of Georgia - Local Self Governance Code. The City/Municipal Council is represented by elected delegates, which endorse their powers in accordance with the Code on Local Self Governance. At the same time, to optimise governance, a municipality can be divided into administrative units that are not administrative bodies and therefore do not have separate powers.

Germany

Local territorial communities (municipalities and associations of municipalities) are legal persons and have legal rights under public law. The actions of their organs (municipal council/district council/council of municipal association and mayor/district chief executive) are attributed to the local communities.

Greece

In the widest sense, the term "municipality" includes and refers to both the territorial area and the governing municipal authorities.

Local government authorities in Greece consist of 332 Municipalities and 13 Regions. The Municipalities and Regions of the country are public entities which form the first level of local government and the second level of local government, respectively. Each public entity is expanded within a specific single territorial unit.

The public entities of the first level of local government (municipalities) are administered by the municipal authorities, while the public entities of the second level of local government (regions) are administered by the regional authorities. In accordance with article 102 of the Constitution for the administration of local affairs, there is a presumption of competence in favour of local government

agencies. The range and categories of local affairs, as well as their allocation to each level is specified by law. The law may assign to local government agencies the exercise of competences that constitute the mission of the State.

Moldova

Under the conditions of art.3 of the Special Law no.436/2006 on local public administration, the public administration in the administrative-territorial units is based on the principles of local autonomy, decentralisation of public services, eligibility of local public authorities and consultation of citizens in local issues of special interest.

In the same order, the local public administration authorities benefit from decisional, organisational, managerial and financial autonomy, they have the right to initiative in everything regarding the administration of local public affairs, exercising, under the law, the authority within the administered territory.

In art.6 the same law establishes that there are no subordination relations between the first level and the second level public authorities (i.e. between the central and local authorities), except for the cases provided by law.

According to art. 4 of Special Law no. 436/2006 on local public administration, the administrative-territorial unit is a legal entity under public law and has, under the law, a patrimony distinct from that of the state and other administrative-territorial units.

At the same time, based on the principles of administrative decentralisation and in accordance with art.1 of Law no.435/2006 on administrative decentralisation, local public authorities have the right to approve, under the law, the statute, internal administrative structures, and ways of functioning, the states and their organisational chart, as well as to establish legal persons of public law of local interest - organisational autonomy.

Poland

An administrative territorial unit has its own legal personality.

Portugal

In Portugal, at the local level, the holder of legal personality is the municipality or the parish. Currently, there are 308 municipalities, of which 278 are in the Mainland, 19 in the Autonomous Region of the Azores and 11 in the Autonomous Region of Madeira.

The national administrative reform, implemented in 2013, reduced the number of parishes in Portugal by about 27%, from 4 259 to the current 3 091. The parishes in Portugal sought to be distributed across the Continent (2 882), Autonomous Region of the Azores (155) and Autonomous Region of Madeira (54).

The representative bodies (“the authority”) are parishes or municipal assemblies (deliberative-bodies) and parish or executive councils (executive-bodies) elected every four years.

Romania

According to art. 96 in the Government Emergency Ordinance no. 57/2019 (GEO no 57/2019), regarding the Administrative Code, **the administrative-territorial units** are legal persons under the public law, with full legal capacity and their own patrimony.

San Marino

The territory of the Republic of San Marino is divided into nine municipalities (called “*Castelli*”), namely: Città di San Marino, Borgo Maggiore, Serravalle, Acquaviva, Chiesanuova, Domagnano, Faetano, Fiorentino, Montegiardino. The “*Castelli*” are territorial entities.

Article 1, paragraph 2 of Law no. 158 of 24 September 2020 reads as follows: “Each “*Castello*” is an institutional and territorial entity, to which **the law attributes legal personality, in addition to administrative, representative and proposal functions concerning the territory to which the entity refers**, also for the purposes of implementing the principle of subsidiarity. This principle is expressly recognised in the context of international European cooperation and constitutional traditions common to European States, for the purposes of achieving an effective administration that meets the citizens’ needs”

<https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/scheda17169796.html>

Slovakia

In the Slovak Republic the municipality is the holder of legal personality at the local level, and it is defined by law as an independent territorial self-governing and administrative unit of the Slovak Republic, which unites persons who have a permanent residence in its territory. The municipality is a legal entity which, under the conditions laid down by law, independently manages its own property and its own income. The basic role of a municipality in the performance of self-government is to take care of the all-round development of its territory and the needs of its inhabitants. Municipalities may be imposed obligations and restrictions in the exercise of self-government only by law and on the basis of an international agreement.

Slovenia

In the Republic of Slovenia the local self-government is autonomous at administrative and political level. It is organised in 212 municipalities with their own competences, including regulatory ones. According to the Constitution of the Republic of Slovenia and in line with the European Charter of Local Self-Government, the Slovene municipality (“*občina*”) has a municipal council (“*občinski svet*”) composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and a mayor (“*župan*”) as executive organ responsible to the municipal council. According to Article 140 of the Constitution, the competencies of a municipality comprise local affairs, which may be

regulated by the law or by the municipality autonomously and which affects only the residents of the municipality. State authorities supervise the legality of decisions of municipalities.

Slovenian people exercise their right to local self-government in municipalities. Municipalities are an equal partner of the State and are managed by three independent bodies — the mayor, the municipal council, and the supervisory committee. The mayor and the municipal council members are elected by the people in municipal elections every four years, while the monitoring committee is appointed by municipal councillors. Out of the 212 municipalities in Slovenia, 11 have the status of urban municipalities. Urban municipalities are allowed by law to have wider responsibilities than ordinary municipalities.

The Local Self-Government Act provides that municipalities have the status of a legal person governed by public law (entities under public law). Neither the mayor nor the municipal council as organs of the municipality have legal personality.

Spain

The administrative territorial units:

1.1 Spanish Constitution 1978.

PART VIII Territorial Organisation of the State.

CHAPTER TWO Local Government

Article 140 The Constitution guarantees the autonomy of the **municipalities, which shall enjoy full legal personality**. Their government and administration shall be incumbent on their respective Town Councils, consisting of Mayors and Councillors. The Councillors shall be elected by the residents of the municipalities by universal, equal, free and secret suffrage, in the manner laid down by the law. The Mayors shall be elected by ten Councillors or by the residents. The law shall regulate the terms under which an open council system shall be applicable.

Article 141

1. The **province** is a local entity, **with its own legal personality**, determined by the grouping of municipalities and by territorial division, in order to carry out the activities of the State. Any alteration of the provincial boundaries must be approved by the *Cortes Generales* (N.B. Congress and Senate) by means of an organic law.
2. The government and autonomous administration of the provinces shall be entrusted to Provincial Councils ("*Diputaciones*") or other Corporations that are representative in character.
3. Groups of municipalities other than those of the provinces may be formed.
4. In the archipelagos, the islands shall also have their own government in the form of «Cabildos» or Councils.

CHAPTER THREE Autonomous Communities

Article 143

1. In the exercise of the right to self-government recognised in Article 2 of the Constitution, bordering provinces with common historic, cultural and economic characteristics, island territories and

provinces with historic regional status may accede to self-government and form **Autonomous Communities** in accord with the provisions contained in this Title and in the respective Statutes.

2. The right to initiate the process towards self-government lies with all the Provincial Councils concerned or with the corresponding inter-island body and with two-thirds of the municipalities whose populations represent at least the majority of the electorate of each province or island. These requirements must be met within six months from the initial agreement to this effect reached by any of the local Corporations concerned.

3. If this initiative should not be successful, it may only be repeated after five years have elapsed.

Article 144 The *Cortes Generales* may, in the national interest, and by means of an organic law: a) authorise the setting up of an Autonomous Community provided that its territorial area does not exceed that of a province and that it does not possess the characteristics outlined in clause 1 of Article 143; b) authorise or grant, as the case may be, a Statute of Autonomy for territories not forming part of the provincial organisation; c) take over the initiative of the local Corporations referred to in clause 2 of Article 143.

Article 145 1. Under no circumstances shall the federation of Autonomous Communities be allowed. (...)

1.2 Law 7/1985, of April 2, 1985, Regulating the Bases of the Local Regime.

Article 11.

1. The **Municipality** is the basic local entity of the territorial organisation of the State. **It has legal personality** and full capacity for the fulfilment of its purposes.

Article 31.

1. The **Province** is a local entity determined by a grouping of Municipalities, **with its own legal personality** and full capacity for the fulfilment of its purposes.

Sweden

In Sweden the municipalities (*kommuner*) have legal personality. Municipalities are governed by directly elected councils but it is the municipality as such that has legal personality.

2. In case in your country **local communities or “administrative territorial units”** are granted legal entity status (and hence recognised as subjects of legal rights and responsibilities), **does the State possess a similar legal status?**

Belgium

The state has legal personality governed by public law.

Bulgaria

The State does not possess a legal status. The administration of the Council of Ministers, the ministries, the state agencies, the state commissions and the executive agencies possess a legal status similar to that of municipalities.

Czech Republic

Yes, according to Czech law, the State possesses the same status of legal entity, i.e. it is capable to have rights and obligations, to act in legal proceedings etc. The so-called “organisational units of the State” (or “state authorities”) act on its behalf (e.g. ministries, financial or building offices).

Denmark

See the answer to question 1.

France

The State is also a legal person.

Georgia

Yes, the State is also a legal person. In addition, since the mayor and city council are elected units, they exercise their statutory powers individually. Consequently, the central government does not have the legal authority to exercise the same powers as elected authorities at the municipal level.

Germany

The Federation and the *Länder* are also legal persons under public law and as such have legal capacity and the capacity to be party to legal proceedings.

Greece

The State is also a public entity, the administration of which, as provided for in Article 101 of the Constitution, is organised according to the principle of decentralisation. This decentralised system is composed of central State organs (central administrations of the State) and of decentralised State organs. The central State organs, in addition to special powers, have the general guidance, coordination and review of the legality of the acts of regional administrations, as specified by law.

Moldova

The legislation of the Republic of Moldova regulates the issue of granting the status of legal entity, through the special norms provided in Law 98/2012 on the specialised central public administration and Law no. 436/2006 on local public administration, which derives directly from the supreme law of the state - the Constitution.

Additionally, art. 174 of the Civil Code no. 1107/2002 establishes that the state and the administrative-territorial units participate in the civil legal relations on equal positions with the other subjects of law.

The attributions of the state and of the administrative-territorial units are exercised in such relations by their bodies, in accordance with their competence.

At the same time, the bodies empowered to exercise a part of the functions (attributions) of the Government possess legal personality only if it derives from the provisions of the law or, in the cases expressly provided by law, from the acts of the central or local public administration authorities.

Poland

Yes, the State has a similar legal status - it has the status of a legal person.

Portugal

The original competence for the pursuit of purposes of public interest rests with the Collective State. However, under the terms of the Constitution of the Portuguese Republic (CRP), a democratic organisation of the State understands the existence of local autarchies, such as the territorial legal persons endowed with representative bodies (Article 235).

When it comes to administrative decentralisation, in principle, we think of the provision by the Constitution and the Law of attributions that, in theory, could belong to the Collective State and that are committed to other public legal persons (and also to some private associations or collective bodies), in the performance of the administrative function of the Collective State.

A series of sectoral decree-laws were published in 2019, in order to implement the process of decentralisation to the municipalities. The decentralisation programme from the central government to the municipalities is underway in a wide range of domains, in particular on education and health areas. The main objective of this process is to bring public management closer to the populations, in a budget-neutral way. It is expected that the strengthening of the proximity to the population will guarantee a higher quality of public policies, following the development and use of mechanisms by the municipalities with effective execution structures. However, strict monitoring of the process is essential in order to assure its budget neutrality, and minimise its impact on municipal indebtedness, and consequently on public debt.

On the other hand, the European Charter of Local Autonomy, which prevails over ordinary law, also stipulates principles of decentralisation and subsidiarity. Those principles necessarily lead us to attribute public ends to State Administration entities that are closer to the citizen, the municipality and the parish.

Romania

The patrimony is one of the constitutive elements of the legal person. Thus, the prerogatives deriving from the management of the patrimony (exercise of rights and responsibilities regarding the public or private property) are the prerogative of the legal personality.

According to the Constitution (art. 136), in Romania public property is guaranteed and protected by law and belongs to the state or administrative-territorial units.

According to art. 15 of the Administrative Code (GEO no 57/2019), the Government exercises the function of managing the state property, which ensures the administration of public and private property of the state.

3. In case in your country local communities or “administrative territorial units” are granted legal entity status (and hence recognised as subjects of legal rights and responsibilities), who has the legal personality at other levels (region, subregion, county...)? In other words, are communities, “administrative territorial units” or authorities recognised as legal entities at these levels?

San Marino

The State has legal personality when it is sued or when it establishes property relations. (See answer to question no. 5.)

Slovakia

No law stipulates that the Slovak Republic is a legal entity. The Constitution defines the Slovak Republic as a sovereign, democratic and legal state. The Slovak Republic may enter into contractual relations, international obligations and also be the holder of rights and obligations. The central bodies of state administration (ministries) are legal entities.

Slovenia

Yes, the State has the same legal status.

Spain

The current Constitution is silent on any reference to the legal personality of the State or of the Administration, while it is expressly attributed to municipalities and provinces (arts. 140 and 141.1), nor is it expressly recognised for the autonomous communities.

However, the content of the Constitution, the Organic Law of the Constitutional Court, the Organic Law of the General Council of the Judiciary, in harmony with many other legal texts, such as the Civil Code, the Law of State Patrimony and the General Budgetary Law, lead to the conclusion that the State has legal personality in the internal order, with which our legal system is doctrinally homologated with that of other countries with an administrative regime. (López, 1982) ²

Sweden

The state has legal personality, although this is not mentioned explicitly in legislation, neither is the legal personality of municipalities.

² López, Laureano. (1982). La personalidad jurídica del Estado. *Anales de la Real Academia de Ciencias Morales y Políticas*, núm. 5. https://www.boe.es/biblioteca_juridica/anuarios_derecho/abrir_pdf.php?id=ANU-M-1982-10034100355

Belgium

The Regions, Communities and provinces (=counties) have legal personality governed by public law.

Bulgaria

District administrations and the specialised territorial administrations, created by a normative act, have granted legal entity status.

In particular, districts (*oblast*) and their administrations are deconcentrated government units at the intermediary level which were created in 1999. They are headed by a district governor, appointed by the Council of Ministers.

The specialised territorial administrations, created by a normative act, are headed by the ministries, the state agencies, the state commissions and the executive agencies.

Czech Republic

The situation at regional level is the same as at local level, i. e. the region has legal entity status and not its internal bodies (regional council, regional board, regional office). The Czech Republic has only two sub-national levels (14 regions, 6.250 municipalities).

Denmark

See the answer to question 1.

France

In France, the local collectivities which have legal personality are:

- Communes [municipalities],
- Departments,
- Regions,
- Overseas collectivities
- Special statute collectivities.

Georgia

There are only two levels of Governance in Georgia: the Central and Municipal levels, which are recognised as a legal entity. At the same time, there are 9 administrative (historical) Regions in Georgia, which geographically cover a number of Municipalities. Administrative Regions have no legal status, but are represented by the State Trustees appointed by the Central Government, who ensure and monitor the fulfilment of state powers at the local level.

In addition, there is a Regional Advisory Council for the Municipalities led by a State Trustee.

Germany

Along with municipalities (local communities, cities administered as independent districts, large cities belonging to districts, non-associated towns and cities), associations of municipalities (municipal associations and districts) are as local territorial communities legal persons under public law, and as such have legal capacity and the capacity to be party to legal proceedings.

Greece

In accordance with article 102 of the Constitution, local authorities of the first and second level (Municipalities and Regions) have both the same status and enjoy administrative and financial independence. Therefore, as laid down in article 4 of Law 3852/2010, between these two levels of local government there are not any relationships of control, or any hierarchical relationship. Their relationship is built on mutual cooperation and support, being developed based on laws, joint agreements and the coordination of common actions.

In addition, in accordance with article 102 of the Constitution, the State adopts the legislative, regulatory and fiscal measures required for ensuring the financial independence and the funds necessary to the fulfilment of the mission and exercise of the competences of local government agencies, ensuring at the same time the transparency in the management of such funds.

Moldova

Similar to p.1. The second tier of local authorities, *rayons*, have legal personality.

Poland

Yes, administrative territorial units are recognised as legal persons at other levels (county, region).

Portugal

The Constitution of the Portuguese Republic (CRP) calls for the Administrative Regionalisation of the Territory (article 236/1 and articles 255 to 262), with the Administrative Regions constituting the third autarchy, placed in an intermediate level between the Central Administration and Local Power, and endowed with increased democratic legitimacy as seen in the constitutional formula for the election of members of the regional assembly (deliberative body) (article 260 of the CRP).

Despite the advantages that regionalisation then presented, it was not endorsed favourably in the Referendum held in November 1998, so Regions have not yet been established (articles 255 and 256 of CRP). Therefore, currently there is no second tier of local government in Portugal, hence no intermediate level between the State and the municipalities.

Romania

Romania has 2 levels of administration as recognised by law – the central and the local level. The local level covers both the counties (*Judete*) and the municipalities/cities and communes, and they all have legal personality, as stipulated in the Administrative Code.

Regions do exist in Romania, but they are neither administrative-territorial units nor do they have legal personality. Known as development regions, they are regional subdivisions established in 1998. These regions are not administrative-territorial units; they are administrative areas that provide a framework for implementing and evaluating regional development policy, as well as collecting specific statistical data, in accordance with European regulations issued by EUROSTAT for the second level of NUTS-2 territorial classification existing in the European Union. Each region is coordinated by an agency for regional development, non-governmental, non-profit, public utility bodies with legal personality.

San Marino

Given its very limited territorial extension (64 Km²), in the Republic of San Marino the “*Castello*” is the only territorial entity.

Slovakia

In addition to municipalities, higher territorial units are also the basis of territorial self-government in Slovakia. The higher territorial unit is a self-governing region. A self-governing region is a legal entity which, under the conditions established by law, independently manages its own property and its own income, secures and protects the rights and interests of its inhabitants. Self-governing regions as well as municipalities have the status of legal entities in Slovakia. Self-governing regions are divided into districts, but despite the fact that the law considers districts to be administrative units, it does not consider them to be legal entities.

Slovenia

According to the Constitution, the Republic of Slovenia should have two levels of local self-government: municipalities and regions. Article 143 of the Constitution provides legal basis for establishing regions as a self-governing local community that manages local affairs of wider importance, and certain affairs of regional importance stipulated by law. Regions should be established by a law which also determines their territory, seat, and name.

However, Slovenia has no regions established yet. If or when established, the regions will have the same legal status as municipalities.

Spain

Autonomous Communities (*Comunidades Autónomas*), or regions, are recognised as such.

In addition, article 24 bis, of the Law 7/1985, of April 2, 1985, Regulating the Bases of the Local Regime, establishes that:

”1. The laws of the Autonomous Communities on local government shall regulate the entities of a territorial scope smaller than the Municipality, which shall have no legal personality, as a form of deconcentrated organisation of the same for the administration of separate population nuclei, under their traditional denomination of *caseríos*, *parroquias*, *aldeas*, *barrios*, *anteiglesias*, *concejos*, *pedanías*, *lugares anejos* and other similar ones, or the one established by law.

2. The initiative shall correspond indistinctly to the interested population or to the corresponding City Council. The latter must be heard in all cases.”

According to article 42 of the Law 7/1985, of April 2, 1985, Regulating the Bases of the Local Regime, Autonomous Communities may establish in their Statutes (organic laws) that by an autonomous community law local entities superior to the municipality (such as, for example, the comarca in the Autonomous Community of Galicia) may be recognised as a local entity with its own legal personality and demarcation, without the creation of the comarca necessarily implying the suppression of the municipalities that comprise it. They may also recognise legal personality to entities inferior to the municipality, such as the rural parish.

Article 44 of the same law provides that:

“1. The municipalities are recognised as having the right to associate with others in commonwealths (*mancomunidades*) for the joint execution of specific works and services within their competence.

2. The commonwealths have legal personality and capacity for the fulfilment of their specific purposes and are governed by their statutes. The statutes must regulate the territorial scope of the entity, its purpose and competence, governing bodies and resources, term of duration and all other matters necessary for its operation.

In any case, the governing bodies shall be representative of the municipalities the association.”

Sweden

Sweden has regions (*regioner*) which are regarded as legal entities. They have the same legal status as the municipalities.

4. In case intermediate-level communities (regions, subregions, counties...) are not granted legal entity status, which authority has such status at these levels?

Belgium

N.A., see answer to question 3.

Bulgaria

Please see the answer to question 3.

Czech Republic

Not applicable.

Denmark

Not applicable.

France

Not applicable.

Georgia

The Central Government is represented by the State Trustee.

Germany

In Rhineland-Palatinate this is not the case.

Greece

Based on the above stated information, no answer is given to this question.

Moldova

According to art. 110-111 of the Constitution and art. 4 of Law no. 764/2001 on administrative-territorial organisation, the territory of the Republic of Moldova is organised, from an administrative point of view, in villages, towns, districts and the autonomous territorial unit of Gagauzia and is carried out on the following levels: villages (communes) and cities (municipalities) constitute the first level, districts, Chisinau municipality and Balti municipality constitute the second level, and the autonomous territorial unit Gagauzia has a special level of administration. There are no intermediate level communities. Only administrative territorial units.

Poland

Not applicable, as they have legal personality - refer to point 1 and point 3.

Portugal

Considering the rejection of the Administrative Regionalisation, simultaneously with the manifestation of the will to continue or strengthen the administrative decentralisation, it was pointed out the reinforcement of the role played by the intermunicipal communities and metropolitan areas in the fields of action that require intermunicipal scale. The optimal level of scale is not easy to determine, yet it is assumed that certain tasks and competencies require an infra-regional and supra-municipal scale. In fact, municipalities have limitations that result from the impossibility of developing, in a sustained way, certain attributions and competences that are entrusted to them. The perception of this reality has obeyed to a profound political debate about the organic model of management of the territory, as well as about which entities should be placed in a pivotal position between the Local Government and the Central Government in order to maximise the efficiency of the administrative machine. In the Chapter of the CRP devoted to Local Power, in large urban areas, the law may establish other forms of territorial organisation (article 236/3).

The creation of associations of municipalities has a constitutional seat in article 253 of the CRP: municipalities can establish associations and federations for the administration of common interests, to which the law may confer their own powers. The legislation on associations of municipalities (metropolitan areas and intermunicipal communities) and associations of parishes and municipalities with specific purposes, constitute the universe of autonomous associations, whose legal discipline is provided for in Annex I of the Law 75/2013 of 12 September (title III - 63 to 110). These entities have the nature of public associations of local authorities and are responsible for regional planning and development and for the provision of essential public services, promoting coordination between municipalities and central administration services.

Romania

Not applicable (see the answer above).

San Marino

There are no intermediate-level local communities (see answer no. 2).

Slovakia

The law grants the status of a legal entity only to municipalities and self-governing regions; in the districts, that represent the community at the middle level, there is no body to which the law would assign such status.

Slovenia

See answer no 3.

Spain

Not applicable.

Sweden

Not applicable.

5. Which act stipulates the legal personality/status of the State, local communities and, as the case may be, other levels of government (region, subregion, county...): the Constitution or the Law? In case it is stipulated by law, is it a general or special law? Please indicate the title of this law and provide a link to it, if available.

Belgium

Neither the Constitution, nor a law – general or special – contain a legal provision which stipulates the legal personality status of the State. The legal personality of the State is based on an old tradition.

Article 3 of the Special Law of 8 August 1980 concerning the Reform of the Institutions, stipulates that the Flemish Community, the French Community, the Flemish Region and the Walloon Region have legal personality (governed by public law):

https://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=fr&nm=1980080801&la=F.

Article 2 of the Law of 31 December 1983 concerning the Reform of the Institutions of the German-Speaking Community, stipulates that the German-Speaking Community of Belgium has legal personality (governed by public law):

https://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=fr&nm=1984023027&la=F#:~:text=La%20Communaut%C3%A9%20germanophone%20a%20la%20personnalit%C3%A9%20juridique.&text=La%20Communaut%C3%A9%20germanophone%20est%20comp%C3%A9tente,TITRE%20II.

Article 3 of the Special Law of 12 January 1989 relating to the Institutions of Brussels, stipulates that the Region of Brussels Capital has legal personality (governed by public law):

https://www.google.com/search?q=loi+sp%C3%A9ciale+12+janvier+1989+relative+institutions+bruxelloises&rlz=1C1GCEB_enBE891BE891&oq=loi+sp%C3%A9ciale+12+janvier+1989&aqs=chrome.1.69i57j0i22i30l5.62503j0j4&sourceid=chrome&ie=UTF-8.

The legal personality of the Provinces and of the Municipalities are primarily based on an old tradition.

The public legal entities, State, Communities, Regions, Provinces and Municipalities are all legal persons in charge of a public service, i.e. a task in the public interest which the public authorities consider essential. For this reason, the performance of that task is subject to a number of special characteristics, such as continuity and equality.

Bulgaria

The Constitution of the Republic of Bulgaria (art. 136, para 3) and the Local government and Local administration Act (art. 14) stipulate the legal personality/status of the municipalities. The Administration Act stipulates the legal personality/status of the administration of the Council of Ministers, the ministries, the state agencies, the state commissions, the executive agencies, the district administrations and the specialised territorial administrations, created by a normative act.

The Constitution of the Republic of Bulgaria: <https://parliament.bg/en/const>

Czech Republic

As regards the State, legal personality is conferred on it by Art. 21 of Act No. 89/2012 Coll., Civil Code. The State is considered a legal entity also in the field of private law. Another legal regulation stipulates how the State legally acts.

The “old” Civil Code (Act No. 40/1964 Coll.), was in its Article 18 more general regarding the State and more specific concerning the municipalities and regions:

- (1) Legal entities also have the ability to have rights and obligations.
- (2) Legal entities are
 - a) associations of natural or legal persons,
 - b) special-purpose associations of property,
 - c) territorial self-government units,

d) other entities stipulated by law.

Letter d) also included the State - this provision was then fulfilled in the relevant provisions of special legal regulations.

As far as municipalities are concerned, the legal basis is given directly in the Constitution (Article 101 para. 3), and then in Act No. 128/2000 Coll., on Municipalities (Article 2 para. 1), where municipalities are explicitly designated as public corporations, which are automatically granted the status of legal personality. For regional level, Act No. 129/2000 Coll., on Regions, sets the same regulation in its Art. 1 para. 2). In general, the status is also stipulated in the above-mentioned Civil Code.

Denmark

The legal personality of administrative authorities is reflected/expressed in the Danish legislation, e.g. sections 25-27 of the Danish Criminal Code:

”Section 25

A legal person may be punished by a fine, if such punishment is authorised by law or by rules pursuant thereto.

Section 26

(1) Unless otherwise stated, provisions on criminal responsibility for legal persons etc. apply to any legal person, including joint-stock companies, co-operative societies, partnerships, associations, foundations, estates, municipalities³ and state authorities.

(2) Furthermore, such provisions apply to one-person businesses if, considering their size and organisation, these are comparable to the companies referred to in subsection (1) above.

Section 27

(1) Criminal liability of a legal person is conditional upon a transgression having been committed within the establishment of this person by one or more persons connected to this legal person or by the legal person himself.

(2) Agencies of the state and of municipalities may only be punished for acts committed in the course of the performance of functions comparable to functions exercised by natural or legal persons.”⁴

France

The legal personality of the State derives implicitly from the Constitution.

The same applies to territorial collectivities, as was confirmed by the Constitutional Council in its decision of 28 December 1982 on the administrative organisation of Paris, Marseille and Lyon (<https://www.conseil-constitutionnel.fr/decision/1982/82149DC.htm>).

³ Regions are also covered by the section.

⁴ Unofficial translation.

With regard to local authorities, reference may usefully be made to the General Code of Territorial Collectivities, which makes it possible in particular to detail the procedures for exercising this legal personality.

Georgia

Both the Constitution of Georgia and the Organic Law – “Code of Georgia on Local Self Governance” stipulate the legal personality: <https://matsne.gov.ge/en/document/download/2244429/15/en/pdf>

Germany

Neither the Basic Law nor the Rhineland-Palatinate State Constitution specifically stipulate the legal character of the State (in the form of the Federation or the *Länder*) or of municipalities.

Section 1 (2) of the local government law of Rhineland-Palatinate (*Gemeindeordnung*, GemO RP) recognises the municipality as the entity responsible for public administration tasks. The law also expresses that the municipality is a legal person under public law, and specifically a (territorial) community which is characterised as an association with an organised membership. The Rhineland-Palatinate local government law (GemO RP) is a state law which, along with the state law on districts (*Landkreisordnung*, LKO RP) contains the federal state’s main regulations on local authority.

Section 64 (1) sentence 1 of the local government law (GemO RP) identifies municipal associations as territorial communities formed for reasons of public interest.

Section 1 (1) sentence 1 of the law on districts (LKO RP) identifies districts as territorial communities.

Legislative texts are available online (in German) at:

<https://www.kommunalbrevier.de/kommunalbrevier/gemeindeordnung-gemo/>

Greece

The legal personality of Municipalities or Regions, through the explicit guarantee of their administrative and financial independence, is specified in article 102 par. 2 of the Constitution as well as in article 1 par. 1 and article 3 par. 1 of Law 3852/2010 for the Municipalities and the Regions, respectively. The legal personality of the State is recognised as such in the strict administrative sense of the term, and in general in the international law, and it is not explicitly stated in the Constitution.

Moldova

Constitution of the Republic of Moldova:

<http://www.parlament.md/CadrulLegal/Constitution/tabid/151/language/ro-RO/Default.aspx>

Law no. 98/2012 on the specialised central public administration:

https://www.legis.md/cautare/getResults?doc_id=120685&lang=ro#

Law no. 344/1994 on the special legal status of Gagauzia (Gagauz-Yeri):

https://www.legis.md/cautare/getResults?doc_id=86684&lang=ro#

Civil Code of the Republic of Moldova:

https://www.legis.md/cautare/getResults?doc_id=125043&lang=ro#

Law no. 435/2006: https://www.legis.md/cautare/getResults?doc_id=125085&lang=ro

Law no. 436/2006: https://www.legis.md/cautare/getResults?doc_id=126281&lang=ro

Poland

The Constitution of the Republic of Poland.

Portugal

The act that stipulates the legal personality/status of the State, local communities and other levels of government is the CRP. The administrative organisation of the local power is structured through articles 235 to 262 of the CRP: https://dre.pt/web/guest/legislacao-consolidada/-/lc/337/202105271748/exportPdf/normal/1/cacheLevelPage?LegislacaoConsolidada_WAR_drefrontofficeportlet_rp=indice

The Law 75/2013 of 12 September approves the legal regime for local authorities, the statute of intermunicipal entities and the legal regime of municipal associations:

<https://dre.pt/web/guest/legislacao-consolidada/-/lc/147103602/202105261646/exportPdf/maximized/1/cacheLevelPage?rp=indice>

Romania

The legal personality of the state and local communities is stipulated in the Constitution and in the Administrative Code.

Romanian Constitution: <http://legislatie.just.ro/Public/DetaliuDocument/47355>

Government Emergency Ordinance no. 57/2019 regarding the Administrative Code:

<http://legislatie.just.ro/Public/DetaliuDocument/215925>

San Marino

The State has legal personality by virtue of a provision already contained in the Statutes dating back to 1600 (Book I, Section XXXVI). In San Marino's legal system, when the State establishes property relations and exercises legal rights and responsibilities, it is called "*Eccellentissima Camera*". In this case, the State is represented by the Government Syndics. The Syndics are two members of the Parliament (called Great and General Council) and are appointed by the Parliament for the duration of the legislature. The Government Syndics represent the State (*Eccellentissima Camera*) in legal proceedings and in all acts involving the acquisition of immovable property in favour of the State, as well as in acts involving the disposal of property owned by the State and in all acts related to financial transfers involving any State commitments.

Book I of the Statutes of 1600 contains several provisions relating to the main constitutional bodies of the State. Over time, these provisions have been reformed by constitutional laws and in any case by hierarchically superior laws: <https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/scheda17009068.html>

The territorial entities - the “Castelli” - are currently governed by Law no. 158 of 24 September 2020. This Law attributes legal personality to them.

Slovakia

The legal personality of municipalities and higher territorial units is defined by the Constitution of the Slovak Republic. The Constitution also states that the details of the legal personality of a municipality and higher territorial units shall be regulated by law. For this reason, the constitutional regulation of the legal personality of municipalities and higher territorial units can be considered as the most general.

The legal personality of municipalities is regulated by Act no. 369/1990 Coll. Act of the Slovak National Council on Municipal Establishment. This is a general law:

<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1990/369/>

The legal personality of higher territorial units is regulated by Act no. 302/2001 Coll. Act on Self-Government of Higher Territorial Units (Act on Self-Governing Regions). This is a general law:

<https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2001/302/>

Slovenia

The Local Self-Government Act stipulates the legal personality of municipalities. It can be found on the following website: www.pisrs.si/Pis.web/cm?idStrani=prevodi

Spain

Spanish Constitution 1978: https://www.congreso.es/constitucion/ficheros/c78/cons_ingl.pdf

Law 7/1985, of April 2, 1985, Regulating the Bases of the Local Regime.

Autonomous Communities’ Statutes (organic laws): https://www.mptfp.gob.es/portal/politica-territorial/autonomica/Estatutos_Autonomia/est_autonomia.html

Sweden

The legal status of the above-mentioned entities is not explicitly mentioned in any legislation. The Instrument of Government (*regeringsformen*, 1974:152) is Sweden's main Constitutional law. It provides the basic organisation of the realm, including provisions on municipalities and regions. The Local Government Act (*kommunallagen*, 2017:725) further regulates the competence and governance of municipalities and regions.

- Link to non-official English translation of the Instrument of Government: [the-constitution-of-sweden-160628.pdf \(riksdagen.se\)](https://www.riksdagen.se/eng/om-riksdagen/160628)
- Unfortunately, to our knowledge there is no updated English translation of the Local Government Act.

6. In case in your country the concept of “municipality” or its analogue is stipulated in the legislation, is this concept applied to a community or a territorial unit? Or does it apply only/also to a local self-government authority (councils or their executive bodies)?

Belgium

N.A., see answer on question 5.

Bulgaria

According to art. 135-136 of the Constitution of the Republic of Bulgaria “the territory of the Republic of Bulgaria shall be divided into municipalities and districts. The territorial division and the prerogatives of the capital city and the other major cities shall be established by law. Other administrative territorial units and bodies of self-government shall be establishable by law. A municipality shall be the basic administrative territorial unit at the level of which self-government shall be practised.”

Czech Republic

The basic definition of a municipality is enshrined in the introductory provisions of the above-mentioned Act on Municipalities. The key attributes of the municipality are "community of citizens", "territorial unit" and "own property".

In addition, it is necessary to point out that there is a so-called “joint” model of public administration in the Czech Republic, meaning that local authorities perform both self-governing and delegated (state administration) tasks.

Denmark

In Danish legislation, the term “local council” is used when referring specifically to the supreme body of the municipality, but also when referring to the *responsibility* for a task placed at the local (municipal) level or to a *decision* to be made at local (municipal) level. The term “municipality” is used when referring to the territorial (geographical) unit, and when describing the local (municipal) authority that performs a task or when referring to financing at local (municipal) level.

France

Before the term "*commune*" imposed itself in 1793 to designate the administrative unit administered by the mayor and the municipal body, it was the term "municipality" which was preferred to it by the decree of 14 December 1789 relating to the constitution of municipalities.

Nowadays, the term "municipality" is almost ignored by law, but it is still used in everyday language to refer to the deliberative body (the municipal council) and the executive body (the mayor) of the *commune*. Sometimes the term "municipality" is used in a more restricted sense, to refer only to the municipal executive.

Georgia

The Organic Law - the Local Self-Government Code (<https://matsne.gov.ge/en/document/download/2244429/15/en/pdf>) defines in art. 2 comma 2 that:

“A local self-governing unit is a municipality. A municipality is a settlement (self-governing city) with administrative boundaries, or an aggregation of settlements (self-governing community) with administrative boundaries and an administrative centre. A municipality shall have elected representative and executive bodies (‘the Municipal Bodies’), a registered population and its own property, budget and revenue. A municipality is an independent legal entity under public law.”

And in art. 3 comma 1:

“Self-government shall be exercised in municipalities - in self-governing cities and self-governing communities”.

Hence, the term “municipality” refers to the local territorial unit, which has also legal personality. The elected authorities exert the power in its name.

Germany

The term *Gemeinde* (municipality) designates the municipality as a territorial community. The defining characteristics of the municipality as a territorial community are the inhabitants of the municipality and the municipal territory, which combine to form a local community. The monocratic and collective organs of the municipality are differentiated from the concept of the municipality.

Greece

As stated above (Question 1), in the widest sense, the term "municipality" in general includes (and refers to) both the territorial area and the governing municipal authorities.

Moldova

According to Law no.764/2001 on administrative-territorial organisation, the concept of "municipality" applies to localities under conditions expressly provided by law. It does not apply to an executive and/or deliberative local authority.

Poland

The concept of municipality refers to a community, not to an authority.

Portugal

The concept of “municipality” applies only to the respective territorial unit, not to the local authority (government councils or their executive bodies).

The legal framework for the functioning of the deliberative and the executive body is also set out in the Law 75/2013 of 12 September, as well as in the Law 169/99 of 18 September in the articles not revoked by the law 75/2013 of 12 September (https://dre.pt/web/guest/legislacao-consolidada/-/lc/117652677/202105261651/exportPdf/normal/1/cacheLevelPage?LegislacaoConsolidada_WAR_drefrontofficeportlet_rp=indice).

Romania

According to the Constitution, Romania's territory is organised, from an administrative point of view, in communes, towns, cities and counties. The first three form the tier 1 of local government (the municipalities); counties are the elected tier 2. For historical reasons about 100 large cities are named "municipium", which should not be confused with the more general term "municipality" applicable to the whole tier 1.

San Marino

The "Castelli" are territorial entities. The territory of the "Castello" is not only the limit of the jurisdiction exercised by its bodies (Township Council and Head of the Township Council), but an element constituting the body itself. The bodies governing the "Castello" represent the residing population.

Please refer to the answer to question no. 1 above.

Slovakia

The term "municipality" applies only to the territorial unit, while the bodies of the municipality are the mayor and the municipal council.

Slovenia

As explained in the answer to question no. 1, legal personality is only related to the municipality and not its organs (mayor and municipal council).

Spain

Municipio is the territorial unit, whereas *Ayuntamiento* is the municipal council, composed of the Mayor and the Councillors.

According to Law 7/1985, of April 2, 1985, Regulating the Bases of the Local Regime:

"Article 19.

1. The municipal government and administration, except in those municipalities which legally operate under the Open Council system, correspond to the municipal council (*Ayuntamiento*), composed of the Mayor and the Councillors.
2. The Councillors are elected by universal, equal, free, direct and secret suffrage, and the Mayor is elected by the Councillors or by the neighbours; all of the above under the terms established by the general electoral legislation.

3. The system of organisation of the municipalities indicated in Title X of this Law shall be in accordance with the provisions thereof. In all matters not provided for in said Title, the common system regulated in the following Articles shall apply.”

Sweden

A municipality has a defined territory as well as a political and administrative structure. Everyone who lives or owns property (including legal persons such as corporations, although these lack voting rights) in the territory of the municipality is regarded as a member of that municipality. The councils and administrative bodies are organs of the municipality.



CENTRE OF EXPERTISE FOR GOOD GOVERNANCE

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Legal Personality at Local Level - 11 Country Cases Summary

Introduction

Following the request of the Ukrainian Specialised Parliamentary Committee on Local Self-Government, the Council of Europe is providing extended and comprehensive support on the issues concerning legal personality at local level in Ukraine. The present overview was prepared by the Council of Europe's Centre of Expertise for Good Governance in the framework of the Programme "Enhancing decentralisation and public administration reform in Ukraine" with the contribution of its expert Mr Sorin Ionita. This report is based on the 11 detailed country cases reports which had been prepared in September 2021 in the framework of the following initiatives:

- Programme "U-LEAD with Europe: Ukraine – Local Empowerment, Accountability and Development Programme": France, Germany, Italy, Poland and Slovenia,
- Swedish-Ukrainian Project "Support to Decentralisation in Ukraine": Latvia and Sweden,
- Council of Europe Programme "Enhancing decentralisation and public administration reform in Ukraine": Albania, Greece, Moldova and Romania.

The document is structured in accordance with the questionnaire formulated by the Specialised Parliamentary Committee.

Overview

1. Among the 11 countries surveyed here, there is broad convergence among the European cases summarised in the table below on the fact that the **Administrative Territorial Unit (ATU) is the entity with legal personality**: on tier 1 (municipalities) and in a number of cases in tier 2, 3 (*rayons*, regions). The respective elected bodies (mayor, council, president of region etc.) only represent their ATUs, but **do not have separate legal personality**. They act exclusively in the name and on behalf of the legal person to which they belong.

2. The dilemma about the legal personality at the local level in countries which were part of USSR seems to originate in the old practice of the Soviet Union to **grant legal personality to each local institution**: the rapporteur for Latvia makes this clear in her response to Question 15. Latvia abandoned this practice in 1994 with the new Law on Local Governments, which defines the organs as representatives of the municipality like in the rest of Europe. Other countries like Moldova still have the old arrangement where for example the *rayon* council has legal personality separate from the *rayon* as ATU, so some degree of ambiguity may still exist on this aspect.

3. The best European-style definition of municipality (ATU of tier 1) is found in the Italian Civil Code: *comune* is the **legal entity** to which the **public legal personality** is attributed. Legal personality confers a precise status, i.e. ownership of rights and protection by the legal system. The constitutive elements of the *comune* are: (i) **population** (all the people who reside permanently on the municipal territory); (ii) **territory** (the space within which the municipality exercises its jurisdiction and is at the same time the subject of law); (iii) **assets** (all the economic activities of the *comune*, i.e. the goods and rights it possesses).

4. Not all national legal systems define the municipality as clearly as the Italian one, but nevertheless they treat it in the same way, whether explicitly or implicit in the legal doctrine; the comments from rapporteurs are clear in this respect. Mutatis mutandis, what is true for municipalities is also true for upper-level ATUs: the **region / province / department are the legal**

person, and their elected councils / presidents etc. are just the authorities representing the respective legal person, in conditions specified by the law.

5. It follows from here that the often-used phrase “self-governing authority” is wrong: technically speaking, the authority (council, mayor) cannot be “self-governing”. It is the ATU (the legal person, the *comune*) which is governing itself through its elected authorities. How much “self-governed” it is, depends on the degree of real decentralisation in every country.

6. It also follows that the ATU is sued in court when there are claims against it, and its elected authorities (the mayor, sometimes with the approval of the council) represent it in court.

7. By contrast, there is much higher variation among countries regarding the norms to hold the elected officials and civil servants accountable for their actions; the table below illustrates this. Some enjoy more protection, like civil servants in Italy; some are not even defined as civil servants, but hired on the basis of the general Labour Law, like in Latvia. In most cases they may be personally liable under the law for damages decided against the municipality in court, especially when malicious intent or gross negligence can be proven.

8. “Municipality” is not a term found in the text of the law in most countries, but one used mainly – and loosely – in common speech when referring to ATUs of tier 1 (local communities with elected organs). Its meaning can be imprecise in languages which do not have the word as such, depending on what is chosen to equate it with: the community or its institutions? A further confusion may appear in Romania and Moldova, where for cultural-historic reasons a number of large cities are labelled “*municipia*” in law. This is largely symbolic and does not matter in practice; the general term “municipality” still refers to all ATUs of tier 1, not only those large cities.

9. Some countries have municipal **bankruptcy laws**; others do not. However, this is mostly a matter of terminology, because the practice is more similar across countries than it may seem. Even where such laws exist, they are different from those applicable to commercial companies and create a softer regime for ATUs with degrees of severity (financial distress, insolvency) under which the public property is protected, cannot be sold and the legal personality of the ATU remains unaffected. The national government or the courts may eventually appoint a commissioner or special administrator, temporarily reducing the attributions of the local authorities, but this happens extremely rarely. Most situations when the mayor or the council are suspended occur for reasons other than the financial problems of the municipality: serious breaches of the law, incapacitation or political stalemate in the council. In brief, where it exists the “municipal bankruptcy” in Europe operates more like a financial recovery mechanism.

10. In conclusion, the general tendency – whether the law is called “municipal bankruptcy”, “municipal insolvency”, or when there is no such law at all – is for the national institutions to assist the municipality with recovery plans, negotiated arrangements and financial transfers, in order to solve the matter expeditiously. France is a special case because it has a strict ex-ante control on the budget planning and execution of local governments, exerted by national authorities through the office of the Prefect and the Ministry of Finance, in order to prevent excessive debts and financial mismanagement in the first place. Other countries supervise closely the local budget deficits, even if the mechanisms may be more informal than in France.

11. With respect to the management of the process of consolidation of local governments, the **Greek and (partly) Albanian** cases are the most useful (and recent) examples of negotiated transition to a structure with fewer and larger municipalities, but with the preservation of

ancillary and symbolic representation of smaller communities. The details are in the full text of the two cases.

1.	<p><i>Who has legal personality (is a legal entity and hence recognised as subject of legal rights and responsibility) in your country at local level, the community (or “administrative territorial unit”) or the authority (council, executive...)?</i></p> <ul style="list-style-type: none"> ● Albania: Administrative Territorial Units (ATU) – municipalities and regions. ● France: ATU – <i>communes</i>, departments, regions, Special-Status communities, Overseas Territories. ● Germany: ATU – municipalities, districts and <i>Länder</i> do, as communities; their authorities / organs (of the Federal Republic, <i>Länder</i>, districts, municipalities) never have the status of legal persons. They are not subject of legal rights and responsibilities, but always act exclusively in the name and on behalf of the legal person to which they belong. ● Greece: ATU – municipalities and regions. ● Italy: ATU – municipalities (<i>comune</i>), regions. ● Latvia: ATU – municipalities. ● Moldova: ATU – municipalities, <i>rayons</i> and ATU Găgăuzia; but also the mayors and <i>rayon</i> councils. ● Poland: ATU – municipalities (<i>gmina</i>), <i>Powiats</i>, <i>Voivodeships</i>. ● Romania: ATU – municipalities and counties (“<i>județe</i>”). ● Slovenia: ATU – municipalities. ● Sweden: ATU – municipalities and regions.
2.	<p><i>In case in your country local communities or “administrative territorial units” are granted legal entity status (and hence recognised as subjects of legal rights and responsibilities), does the State possess a similar legal status?</i></p> <ul style="list-style-type: none"> ● Albania: Yes, similar status. ● France: Yes, similar status. ● Germany: Yes, similar status. ● Greece: Yes, through central and deconcentrated bodies. ● Italy: Yes, similar status. ● Latvia: Yes, the State is the “initial legal entity” under public law. ● Moldova: Yes, similar status. ● Poland: Yes, similar status. ● Romania: Yes, exerted through Ministry of Finance and the Prefects. ● Slovenia: Yes, similar status. ● Sweden: Yes, exerted in other areas than ATUs.
3.	<p><i>In case in your country local communities or “administrative territorial units” are granted legal entity status (and hence recognised as subjects of legal rights and responsibilities), who has the legal personality at other levels (region, subregion, county...)?</i></p> <ul style="list-style-type: none"> ● Albania: The 12 regions. ● France: Departments, regions, inter-municipal entities. ● Germany: Districts, <i>Länder</i>. ● Greece: The 13 regions. ● Italy: Regions, provinces, and metropolitan cities. ● Latvia: The five Planning Regions are derived legal entities. ● Moldova: <i>Rayons</i> (32) and Găgăuz Autonomous Unit. ● Poland: <i>Powiats</i> and <i>Voivodeships</i> (similar to <i>rayons</i> and <i>oblasts</i> in Ukraine). ● Romania: The 41 counties (“<i>județe</i>”). ● Slovenia: Nobody else; regions (<i>oblasts</i>) are just statistical units. ● Sweden: The 20 regions.
4.	<p><i>In case intermediate-level communities (regions, subregions, counties...) are not granted legal entity status, which authority has such a status at these levels?</i></p> <ul style="list-style-type: none"> ● Albania: N/A ● France: N/A ● Germany: N/A

	<ul style="list-style-type: none"> ● Greece: N/A ● Italy: N/A ● Latvia: N/A ● Moldova: N/A ● Poland: N/A ● Romania: N/A ● Slovenia: N/A ● Sweden: N/A
5.	<p>Which act stipulates the legal personality/status of the State, local communities and, as the case may be, other levels of government (region, subregion, county...): the Constitution or the Law? In case it is stipulated by law, is it a general or special law? Please indicate the title of this law and provide a link to it, if available.</p> <ul style="list-style-type: none"> ● Albania: Constitution and special laws. ● France: Special legislation (the act of “<i>établissement public</i>”) but it is implicit in the spirit of the Constitution, case law dating back to the 18th-19th centuries and “consubstantial with the concept of decentralisation”. ● Germany: Legal personality of ATUs not explicitly written, but implicit in the Basic Law for the Federal Republic of Germany and the Constitutions of the Länders (except Bavaria and North Rhine-Westphalia, where it is explicit). ● Greece: Constitution, plus details in special legislation. ● Italy: Constitution (art 114.1), Civil Code and Law on Local Authorities. ● Latvia: General (Law on State Administration) and special legislation. ● Moldova: General legislation (Civil Code). ● Poland: Constitution and the special laws on local self-government. ● Romania: General legislation: Administrative Code, which incorporated pre-existing special laws. ● Slovenia: Constitution and special laws on local self-government. ● Sweden: Constitution, plus details in special legislation.
6.	<p>In case in your country a notion “municipality” or its analogue is stipulated in the legislation, is this notion applied to a community or a territorial unit? Or does this notion apply only/also to a local self-government authority (councils or their executive bodies)?</p> <ul style="list-style-type: none"> ● Albania: Municipality means community / territorial unit. ● France: Municipality means <i>commune</i> / territorial unit, not its council. ● Germany: Municipality means community as a corporation/legal person, defined by its territory and the citizens living there. ● Greece: Yes, municipality means community / territorial unit. ● Italy: Municipality means the territory. ● Latvia: Municipality means local community / territorial unit; it may refer to its organs when these act on behalf of the former. ● Moldova: Municipality in common speech means community / territorial unit; unrelated, “<i>municipium</i>” is a special legal designation for the 13 largest cities in the Republic of Moldova. ● Poland: Municipality means the <i>gmina</i> as ATU, not its authorities; however, this is not a legal term but just one used in current speech for international comparisons. ● Romania: Municipality in common speech means community / territorial unit; unrelated, “<i>municipium</i>” is a special legal designation for the largest 103 cities of the country. ● Slovenia: Municipality means local community. ● Sweden: Municipality means community / territorial unit.
7.	<p>May bankruptcy proceedings be instituted against a local community or “administrative territorial unit” in your country? (yes or no)</p> <ul style="list-style-type: none"> ● Albania: No. ● France: No. ● Germany: No, the State is supervisor of debts and implicit guarantor. ● Greece: No, but there are procedures to solve “over-indebtedness”. ● Italy: Yes.

	<ul style="list-style-type: none"> ● Latvia: No. ● Moldova: No. ● Poland: No. ● Romania: Yes, in a soft form, under different law than for companies, operating in two steps: financial distress and insolvency. ● Slovenia: No, and the municipal borrowing is capped. ● Sweden: Yes, but in practice it does not happen, situations are solved through negotiations and government assistance.
8.	<p><i>If you answered “yes” to question No.7, please answer the following question. Do general bankruptcy proceedings applicable to other legal entities apply to local communities or “administrative territorial units” in your country? If any special proceedings are in place, what are key criteria of bankruptcy of a local community or “administrative territorial unit” and three to four special aspects that make bankruptcy proceedings against local communities or “administrative territorial units” different from bankruptcy proceedings against other legal entities?</i></p> <ul style="list-style-type: none"> ● Albania: N/A ● France: The State exerts strict ex-ante control on local budget deficits through Prefects and Regional Financial Courts. The local accountant / cashier are employees of the State. ● Germany: N/A ● Greece: N/A ● Italy: The Law on Local Administration specifies bankruptcy proceeding against local authorities, different from those applicable to companies: “state of financial distress”, defined as inability to perform or balance the budget. The bankruptcy procedure does not lead to the liquidation of the municipality; in addition, the debts of the municipality may be paid by the State. ● Latvia: No, however special legislation regulates how situations of budget distress are solved. ● Moldova: N/A ● Poland: Municipal bankruptcy is not possible under the law. ● Romania: In situations of arrears of payments specified by the law, including non-payment of salaries, a recovery plan and/or a special administrator appointed by court takes over some functions of the elected representatives (mayor). ● Slovenia: N/A ● Sweden: General procedures apply, but the situation is in practice avoided.
9.	<p><i>Do the laws of your country provide for suspension of local self-government authorities of a local community or “administrative territorial unit” (local councillors or executive bodies) from the management of affairs when the local community or “administrative territorial unit” enters into voluntary administration? (yes or no)</i></p> <ul style="list-style-type: none"> ● Albania: Yes. ● France: Yes. ● Germany: No. In serious situations of breaching the law, the State can suspend local authorities and appoint a State Commissioner. ● Greece: N/A ● Italy: Yes. ● Latvia: Mayors can be removed from office by Parliament decision, and temporary administration installed, but as a consequence of serious breaching of the law, not because of budget deficits. ● Moldova: N/A ● Poland: Yes. ● Romania: Yes, partly: the chief executive (mayor) is suspended from daily budget management and approval of expenditures, which passes to the special administrator (rarely, if ever, happened in practice). ● Slovenia: No. ● Sweden: No voluntary administration. The mayor can be suspended after an audit if very serious mismanagement occurred (it does not happen in practice).

10.	<p><i>If you answered “yes” to question No. 9, please elaborate what are conditions for introduction of the voluntary administration, what government authority is responsible for the voluntary administration, and what is the period of voluntary administration?</i></p> <ul style="list-style-type: none"> ● Albania: Municipalities are in financial distress when debt is higher than 80% of the annual revenues. The Ministry of Finance is notified and may decide to implement budget aid or financial supervision. Municipalities are in insolvency if debt is higher than 130% of the annual revenues or fail to implement the recovery plan agreed with the Ministry. In this case, the government decides to place them under voluntary administration. ● France: The mayor and the council can be suspended by a ministerial decree and/or revoked by a decree of the government, following a proposal by the Prefect, for serious and repeated breaches of obligations. In case of emergencies the local authorities can also be suspended for up to one month by the Prefect and replaced by “special delegation” (but this situation almost never occurred). ● Germany: Länder ministries in charge of local affairs can suspend local authorities (see point 9) and bring the situation back within the limits of the law, by action proportional with the cause, and with the aim to restore the incapacitated state organ expeditiously. ● Greece: N/A ● Italy: When financial distress is declared, but also in other cases (political stalemate in council; proven links with mafia) the government and the President of the Republic suspend / remove from office the elected representatives and appoint a commissioner to supervise the recovery plan (top civil servant in the Ministry of Interior). ● Latvia: Parliament decision to suspend local authorities for misconduct or for being blocked politically, not because of budgetary problems. The decision for the Parliament is prepared by the Ministry of Regional Development, voted on by the Government before its submission to the Parliament. It happened in 2020 with Riga City Council. ● Moldova: N/A ● Poland: The Prime Minister appoints a replacement / commissioner in various cases of incapacitation of the mayor; in extreme cases the council can be dissolved. ● Romania: There are two situations under the law: “financial crisis” declared by the local council, when a recovery plan must be carried out under the supervision of the Court of Accounts; and “insolvency”, when salaries are not paid for more than 120 days, or arrears of payments older than 120 days reach up to 50% of the annual local budget, and a special administrator is appointed by a judge. ● Slovenia: N/A ● Sweden: N/A
11.	<p>Do claimants, both legal entities and individuals, lodge their claims with a local community or “administrative territorial unit” in regard to any and all local issues? Do the laws of your country allow that a person may file a lawsuit directly with a local self-government authority or its official, but not with a local community?</p> <ul style="list-style-type: none"> ● Albania: Claims are filed against the municipality. ● France: Interested persons can sue the ATU; the Prefect can do it for decisions breaching the law. Only if local officials commit mistakes or crimes “in private capacity”, not on duty, they are sued individually. ● Germany: Claims are filed against the ATUs. Three Länder may allow in very rare cases action against the mayor, but still the ATU will cover the damages. ● Greece: Claims are filed against the public authorities (mayor, council), not against the local community. ● Italy: Claims are filed against the municipality or the official. ● Latvia: Claims are filed against the municipality. ● Moldova: Claims are filed against the municipality. ● Poland: Claims are filed against the municipality (good for citizens, as they do not have to determine which body within the municipality is responsible). ● Romania: Claims are filed against the municipality. ● Slovenia: Claims are filed against the municipality, not its representative bodies. ● Sweden: Claims are filed against the municipality; citizens and entities can request a legality check on municipal decisions.

12.	<p><i>Does your country hold officials of local self-government authorities disciplinarily or financially (civilly) liable for ineffective or unlawful decisions (where such decision results from a political position, error or incompetence, but is not a criminal offence)? If so, may damages be recovered from the property of the official at fault rather than from the property of the local community or “administrative territorial unit” (for example, joint and several liability of the local community/“administrative territorial unit” and the official or recovery from the official by recourse)?</i></p> <ul style="list-style-type: none"> ● Albania: Public organs and their employees are responsible for damage caused to private parties with their own property only in cases when deceit can be proven. Disciplinary procedures against local officials in serious cases are exerted by the Council of Ministers. ● France: Local officials cannot be sued in court for ineffective or unlawful decisions, unless they commit a criminal offence. Local accountants have a different type of accountability (they are employees of the State). ● Germany: There is administrative responsibility for mistakes from intent or negligence, but the municipality is accountable materially. It can subsequently take recourse against the official in case of intentional or grossly negligent action. ● Greece: Public officials are responsible under the civil law only for damages produced to the municipality, in cases of deceit or gross negligence; the municipality is responsible for damages to third parties. Disciplinary procedures against local officials can be launched by the state representatives in the territory (supervisory function). Removal from office happens in case of criminal conviction. ● Italy: The municipality and the civil servant are jointly liable for damages decided in court, so either of them can be sued. In practice the vast majority of actions are against the municipality. ● Latvia: The municipality is accountable materially for damages in court; it may recover the money from the official in cases of intent or gross negligence. Local employees are not civil servants, so they are responsible to the municipality under Labour Law. ● Moldova: Officials are jointly responsible for the decisions they made in office, and become personally responsible only if illegal actions have taken place. ● Poland: The municipality is fully responsible to third parties, but it can start its own procedure against officials. ● Romania: Officials are financially liable for unlawful decisions if this is determined by an inspection from the Court of Accounts (national auditor). ● Slovenia: Officials are liable for damages committed with intention or as a result of gross negligence, otherwise the municipality is liable. ● Sweden: Yes, complex mechanism (can be detailed on demand).
13.	<p><i>What legal status do the local self-government authorities have if the local community or “administrative territorial unit” is a legal entity and hence recognised as subject of legal rights and responsibility? How is the scope of the legal personality of local self-government authorities defined in this case?</i></p> <ul style="list-style-type: none"> ● Albania: The municipality is the legal entity; elected municipal councils and the mayors represent it. ● France: Legal personality can only belong to a <i>local self-government unit: commune</i>, province, region. Public authorities are natural persons who are invested (by election or appointment) with a public office to act as organs in the name of the legal person. ● Germany: The municipality is the legal entity; elected / career officials represent it according to rules. ● Greece: The settlements (communes, sub-units of municipality) do not have legal personality. ● Italy: Only the municipality is the legal entity. ● Latvia: The municipality is the legal entity; elected / career officials represent it according to rules. ● Moldova: The authorities as such do not have legal personality separate from that of the corresponding territorial unit. ● Poland: The municipality is the legal entity; elected / career officials represent it according to rules. ● Romania: The municipality is the legal entity; elected / career officials represent it according to rules. ● Slovenia: The municipality is the sole legal entity; elected council and mayor represent it; the supervisory body is appointed by the council. ● Sweden: The municipality is the legal entity; elected / career officials represent it according to rules.

14.	<p><i>Who can act on behalf of a local community or “administrative territorial unit” directly in court? On what grounds? Do the laws of your country allow that a local community or “administrative territorial unit” is represented in external relations (in court, for example) by the State or a government authority?</i></p> <ul style="list-style-type: none"> ● Albania: ATUs (municipalities and regions) are represented by the mayors / presidents. ● France: The municipality is represented in courts by the executive authority, mayor or president, who may need an authorisation by the council, depending on the type of procedure. ● Germany: The municipality is represented in courts by the mayor, who can delegate this right. Approval is needed from the council on important cases. ● Greece: ATUs (municipalities and regions) are represented legally by the mayors / presidents or delegates. ● Italy: The top executive of the respective municipality: <i>comune, provincia</i>, region etc. The state cannot represent lower-level authorities. ● Latvia: The chairperson or qualified delegates decided by the local council. ● Moldova: ATUs (municipalities, <i>rayons</i> and ATU Găgăuzia) are represented by the mayors / presidents / the <i>Başkan</i>; no provision for representation by the State. ● Poland: The top officials (mayors, president) represent the municipality in court. The State takes this role only indirectly in special situations, when there is a temporary special commissioner. ● Romania: ATUs (municipalities and counties) are represented by the mayors / presidents; external legal services can be bought. The State cannot represent municipalities except in situations of joint responsibility under the EU Treaties. ● Slovenia: The municipality is represented by the mayor. ● Sweden: The municipality is represented in court by the executive board; the function can be delegated.
15.	<p><i>If in your country the State or a local community “administrative territorial unit” has changed their legal personality over the past thirty years, please indicate how long did the transformation take and what were the milestones of the transformation?</i></p> <ul style="list-style-type: none"> ● Albania: Significant territorial consolidation reform in 2014, with international support and after a brief period of consultation. ● France: ATUs have legal personality. Reforms may change the limits of ATUs, competences, powers or resources, even its name, but this has no impact on legal personality. ● Germany: During the German reunification after 1990, the East German municipalities (State organs) were redefined in law according to the West German model. ● Greece: Two big rounds of reform (consolidation) in the past 30 years; fewer and bigger municipalities and regions. Older (smaller) units on both tiers lost legal personality. ● Italy: N/A ● Latvia: The Soviet practice to grant legal personality to all authorities was changed in 1994 (Law on Local Governments) and the new system reinforced in 2001-2002 (laws on administration). ● Moldova: Găgăuz Autonomous Unit created with special status in 1994; soft separatist actions afterwards, including referendum. Between 1998 and 2003 the <i>rayons</i> were abolished and replaced with 9 counties (“<i>județ</i>”), but the change was reversed after 2003. ● Poland: Municipalities obtained legal personality fast (1990); <i>Powiat</i> and <i>Voivodeships</i> in 1999. ● Romania: No major change in the past 30 years. ● Slovenia: N/A ● Sweden: N/A
16.	<p><i>If in your country the State or a local community/“administrative territorial unit” changed their legal personality amid external or internal armed conflicts, were any risks identified for the territorial integrity or national security as a result of this change? If so, what preventative actions were taken to avoid these risks?</i></p> <ul style="list-style-type: none"> ● Germany: Strengthening the municipalities through decentralisation has been partly a reaction to the Nazi regime centralism. ● Moldova: Territories on the left bank of the Dniester (Transnistria) broke away from the country in 1992 to form an unrecognised Republic.

Analysis report on legal personality of local public entities in the light of the European Charter of Local Self-Government and the current debate in Ukraine on this issue

Basic theoretical concepts on legal personality

The Romans considered the independent agencies as much the units of law as natural persons. They attributed accordingly a distinct personality to the state, moreover to corporations and associations. According to this understanding, a person in law is a right and duty bearing unit and is either a natural or a juristic one. The latter includes artificial persons like companies, registered societies, and public corporations. The Romans had a system of territorial organisation where the small colonies, the *municipes* were modelled on the pattern of the state and, like the latter had a legal personality. The theory of personality has its origin from the *corpus juris*, where juristic persons were divided into four principal classes: the *communes*, the voluntary associations, the charitable and religious associations, and the treasury¹.

Regarding the origin and the nature of juristic persons, several theories have been developed. One of the most common and oldest ones (dating back to Roman conception and subsequently to Pope Innocent IV) is that corporations have their origin through fiction. English kings tried to empower themselves against the feudal system and eventually managed (by the 16th century) to impose the understanding that incorporation always requires the sovereign assent, a perception that later founded the 'Concession Theory'². In early 19th century, the Fiction Theory was further elaborated by Savigny: By the first fiction, the corporation is given a legal entity, by the second fiction, the corporation is clothed with an individual will which is different from that of its members. A juristic person would bear liability for legal acts of its' officials but not for their illicit acts. Leaning on the natural law doctrine of Johannes Althusius, the Realist Sociological Theory propagated that a human is a physical organism while a corporation is a social organism, it exists as an objectively real entity that the law merely recognizes and gives effect to its existence. A legal person is therefore a real personality with a will and a life of its' own, bearing full liability for the acts of its agents undertaken in their official capacity. Otto von Gierke³, an exponent representative of this theory, developed his own 'Genossenschaftslehre' focusing on associations and claiming that municipalities are forms of association with their own original personality, since they are created by the society and not by the state. The distinct juristic personality of the municipality

¹ Kr. Bahadur, Personality of public corporation and lifting the corporate veil, *Journal ILI*, Vol. 14, No. 2 (April-June 1972), pp. 207-227

² *Ibid.*

³ O.v.Gierke, 1868. *Das deutsche Genossenschaftsrecht*, Berlin: Weidman.

is a prerequisite for local self-government and an indispensable form of delineation from the state ('juristische Selbstverwaltung': 'juristic self-government'). At the same time, however, Gierke classified the municipalities as 'territorial corporations' ('Gebietskörperschaften'), just like the state, accepting that the territory defines the responsibility of such corporations, and that all individuals and property within their territory are subject to their territorial responsibility, according to the maxim 'quidquid est in territorio est etiam de territorio'. In France, L.Duguit used the similar term 'territorial community' ('communaute territoriale'), but this notion did not refer primarily to legal persons but to territorially defined societies⁴. In Italy, the legal pluralism of S.Romano saw in the social body (corpo sociale) the sociological substratum of legal orders and institutions, such as the subnational authorities. At the same time, however, he perceived the municipalities as rudimentary territorial entities ('enti ausiliarii')⁵.

The question about the relation between the municipal territorial corporation and the territorial corporation of the state was eventually addressed by Hugo Preuss, who accepted that municipalities, in spite being distinct legal persons, are not only territorially integrated in the state; moreover, the municipalities (and also the counties, the federal Länder and eventually the State) are parts of a tiered system of territorial corporations gradually reaching from the bottom to the top, and building a chain of democratic legitimacy and accountability which is strengthening the cohesion of the republic, in addition to the rule of law. Notwithstanding, territorial corporations can also follow own interests which are deviating from state interests as far as they do not break the law⁶.

Legal Personality and Local Authorities

Today, in many European constitutions, it is provided that municipalities, sometimes other forms of territorial self-government (e.g. regions) as well, are endowed with legal personality (e.g. in Poland, Spain, Georgia, Bulgaria, Italy, Greece etc.). All over continental Europe, under the exceptions of some former Soviet Union countries, municipalities have legal personality. In (most of) the UK, however, the council is endowed with legal personality and not the corresponding territorial entity. Such a council is a corporate body, a legal entity separate from that of its members. Its decisions are the responsibility of the whole body. The council is granted powers by Parliament including the important authority to raise money through taxation and a range of powers to spend public money. Local authorities have many legal duties to deliver services. The pattern of legal personality given to the council and not to the municipality appears as a peculiarity, from a continental European perspective. This is,

⁴ L.Duguit, 1903. *L'Etat, les gouvernements et les agents*. Fontemoing: Paris.

⁵ S.Romano, 1908. *Il Comune*, in: V.E.Orlando, *Primo trattato complete di Diritto Amministrativo Italiano II(1)*. Milano: Societa Editrice Libreria.

⁶ M.S.Giannini, 1970. *Diritto Amministrativo*, Milano: Gioulfre.

however, a result of a long-standing legal tradition that is connected to the evolution of the legal system and of political institutions in the UK. The legal personality of British councils does not have, per se, a negative impact on the situation of local self-government in the U.K.

The case of U.K. was a main reason why the English version of the Charter uses the term 'local authorities' which does not correspond correctly to the French term 'collectivite locale'. According to the final phrase in the text of the Charter, however, 'both texts' (the English and the French one) are 'equally authentic'. This means that these two different terms which are used 36 times in each of these two versions of the Charter, are equal and the Charter does not prioritize or impose neither a meaning and/or a pattern following the British model, nor a meaning and/or pattern following the 'continental' model.

Legal form of local authorities and the provisions of the Charter

There are, nevertheless, several provisions of the Charter which premise a certain level of legal capacity at the level of local authorities. More specifically, Art. 3 para. 1 of the Charter defines the content and the subjects of local self-government. As the contemporary commentary emphasizes, the Charter does not mention as subjects the local citizens but "local authorities". The Charter is aimed at various types of local authorities. Therefore, 'the concept of "local authorities" (mentioned 36 times in the Charter) should be understood and interpreted in a broad sense'. These are 'territorial public entities endowed with their own legal personality and having the power to make and enforce decisions'⁷. According to article 13, 'the principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the Party'.

The latter means that in principle, the requirements set out in Part I of the Charter 'relate to all categories or levels of local authorities present in each member State. The Charter does not define the concept of "local authorities" because this depends largely on each Party's political and constitutional traditions and on its legislation on the subject'⁸. In the relevant literature, it has been argued that the term "local authority" should only be construed on the basis of the domestic law of the member States. The contemporary commentary points out that 'the diversity of domestic situations means that there may be different types of local authority depending on their size, settlement patterns, population and territorial or non-territorial nature'⁹. Within the same territory, different kinds of entities can co-exist. As another example of the Charter's flexibility, Article 13 permits the Parties to determine the scope of application of the treaty in respect of their different types of local authority. The

⁷ Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee), CG/MON16(2020)09: CONTEMPORARY COMMENTARY BY THE CONGRESS ON THE EXPLANATORY REPORT TO THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT, Rapporteurs: 1Jakob WIENEN, Netherlands (L, EPP/CCE): <https://mycloud.coe.int/s/9epibHQLKPBbkPD>

⁸ Ibid.

⁹ Ibid

national authorities, on ratifying the Charter, may exclude certain local authorities from local autonomy, or may restrict the enjoyment of local self-government to certain authorities.

In the case of Sweden, for example, a declaration was made that the scope of the Charter is confined 'to the following local and regional authorities in accordance with the provisions of Article 13: municipalities (Kommuner), county councils (Landstingskommuner)'. By reference to the same article, Ireland declared that it intends to confine the scope of the Charter to the following categories of authorities: county councils; city councils; town councils. The UK has made a declaration that it 'intends to confine the scope of the Charter to the following categories of authority': In England to county councils, district councils, London borough councils, and to the Council of the Isles of Scilly. In Wales to all councils constituted under Section 2 of the Local Government (Wales) Act 1994. In Scotland to all councils constituted under Section 2 of the Local Government (Scotland) Act 1994'. Territorial Councils (parish, local, county, district, borough councils) are the most common types of local authority in the UK, but not the only ones. Therefore, in the same declaration it was made clear that the term "local authority" in the Charter shall not include local or regional bodies in the UK 'such as police authorities which, by reason of the specialist functions for which they are responsible, are composed of both elected and appointed members'¹⁰. In this way, single-purpose territorial authorities that include non-elected members were explicitly excluded from the scope of Charter.

It is clear that the local authorities who are the subjects of local self-government (or "autonomie locale" in the French version) according to the Charter, should be democratically constituted. The concept of local autonomy requires local government to express, directly or indirectly, the will of the local population. Therefore, the two paragraphs of Article 3 of the European Charter of Local Self-Government are closely related: "local self-government" is shaped in terms of "local democracy". Paragraph 2 indicates how the interests of the local population are determined, that is by the local population itself, by way of democratic decision-making.

As far as the structure of local government is concerned, the Charter does not opt in favour of any specific form of local political organisation and leaves the choice to domestic legislation. It only highlights the central role that must be afforded to elected councils and assemblies. It does not mention a need to have executive bodies, or the way in which they should be appointed, but only states that elected councils or assemblies "may possess executive organs responsible to them". The Charter therefore establishes the general principle that the executive is answerable to the representative bodies, irrespective of the method of the executive's election or appointment¹¹.

¹⁰ See the list of various reservations and declarations by the different signatory countries: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/122/declarations?p_auth=JeNTztGC

¹¹ See Contemporary Commentary, op.cit.

In any case, the primacy of the directly and universally elected council or assembly means that this body takes the most relevant decisions (in some countries there is even an explicit presumption of competence for the council) and that there should be some tools to make the executive body accountable to the council. The concept of “responsibility” does not necessarily mean that the executive must be dismissible by the assembly. The minimum that is necessary for the “responsibility” requirement to be met is the introduction of a system of effective supervision of the executive by the assembly, allowing for regular scrutiny of the executive’s activities¹².

According to Recommendation 133 (2002), ‘national law must guarantee representative assemblies the means of effective scrutiny of the executive’s action, pursuant to Article 3, paragraph 2 of the Charter, which scrutiny may be exercised, inter alia, through voting of the local budget and local taxes, approval of reports on implementation of the budget or urban development plans, and adoption of local policies for an entire term of office’; moreover, ‘professional administrators must perform their duties under the supervision of the elected body’. Also in Recommendation 228 (2007) denotes that “the law must provide the council or assembly with a minimum number of control mechanisms. Furthermore, the council or assembly must have the deciding say in matters of prime importance to the local authority, which should include the budget”¹³.

While the first paragraph of article 3 defines the ‘local authorities’ as subjects of local self-government (‘autonomie locale’ in the French version), the second paragraph of this article stipulates that this right shall be exercised by the council or assembly while any executive body, if existing, is accountable to it. The primacy of the council/assembly and the fact that, according to the Charter, the council is the entity exercising the right to local self-government, does not mean, that the notion of ‘local authority’ (who is the holder of the right to local self-government according to the first paragraph) is identical with the notion of ‘council/assembly’. The Charter requires that decision-making within the scope of local self-government belongs to the council; moreover that execution and implementation of these decisions should be accountable to the council, if distinct executive organs exist. Therefore, in countries where the local authority is a territorial community with legal personality, the principal organ of this legal person should be the council/assembly, concentrating decision-making powers: In countries where the council/assembly is endowed with legal personality and constitutes the local authority itself, the allocation of powers and responsibilities on the relevant territory should be in line with the Charter.

Legal personality of local authorities in Ukraine: Status and current reform debate

¹² See Recommendation 113 (2002) on relations between the public, the local assembly, and the executive in local democracy (the institutional framework of local democracy).

¹³ Congress of Local and Regional Authorities, Draft Explanatory Report to the Additional Protocol to the European Charter of Local Self-Government, Recommendation No. 228 (2007), 12 December 2007.

Ukraine has not made any declaration according to article 13 concerning the categories of local authorities to which the Charter should be confined or/and relevant categories that should be excluded. Therefore, according to article 13, the principles of local government should apply to 'all the categories of local authorities existing within the territory of Ukraine.

According to article 132 of the Constitution, 'the territorial structure of Ukraine is based on the principles of unity and indivisibility of the state territory', and on 'the combination of centralisation and decentralisation in the exercise of state power. Article 133 provides that the system of the administrative and territorial structure of Ukraine is composed of the Autonomous Republic of Crimea, oblasts, districts, cities, city districts, settlements and villages. Article 92 stipulates that the law determines, inter alia: ...the principles of local self-government...; the status of the capital of Ukraine; the special status of other cities'.

Article 140 of the Constitution defines local self-government as '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'. The same article stipulates that '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'. According to these wordings local self-government is defined as 'a right of the territorial community constituted by its residents'. This right is exercised by the respective territorial community, usually through bodies of local self-government, that means the councils and their executive bodies. According to Article 141 of the Constitution, councils of settlements, villages and cities are directly elected for a four-year term and the same applies for the corresponding head who leads the executive body of the council and presides at its meetings.

Article 142 of the Constitution stipulates, inter alia, that 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 development, and control their implementation; approve budgets of the respective administrative and territorial units, and control their implementation; establish local taxes and levies; establish, reorganise and liquidate communal enterprises, organisations and institutions, and also exercise control over their activity. Certain powers of bodies of executive power may be assigned by law to bodies of local self-government who are, in these cases, 'under the control of the respective bodies of executive power' (last sentence of article 142).

The Constitution makes no reference to the question of the legal personality at the level of territorial communities. It refers to the territorial communities as subjects of the right of local self-government, while the Charter refers to 'local authorities' as subjects of this right. On the other hand, while the Charter stipulates that the council/assembly exercises this right, the Constitution provides that this right is exercised 'through bodies of local self-government' (councils, and their executive bodies). Decisions of these bodies, 'are mandatory for execution throughout the respective territory' (art. 143 of the Constitution).

The 'law of Ukraine on local self-government in Ukraine' (LSGU), includes the following definitions: an *administrative-territorial unit* is an oblast, a raion, a city, a sub municipality, a settlement, a village. *Territorial communities* are 'citizens who permanently reside within the boundaries of a village, settlement, or city, which are independent administrative-territorial units, or voluntary associations of citizens of several villages with one administrative center'. A *representative local self-government body* is 'an elected body (council) consisting of deputies and which is granted, in accordance with the law, the right to represent the interests of the territorial community and to adopt decisions on its behalf'.

Neither the administrative-territorial units (obviously administrative-territorial divisions), nor the 'territorial communities' (defined as their residents or as associations of citizens) are recognized as legal persons. The law attributes legal personality to the councils: Article 16 LSGU. ('Organizational and Legal, Material and Financial Bases of Local Self-Government') provides that 'local self-government bodies are legal entities which act independently within the limits of their exclusive powers, as envisaged by this and other laws, and which bear responsibility for their activity in accordance with the law'. These councils who are legal entities 'may share, on a contractual basis, certain powers and budget funds' (art. 16 para 7). According to article 142 of the Constitution, 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. The fact, however, that common property of different hromadas is managed by district and oblast councils, can raise criticism.

The LSGU enumerates the powers (general, exclusive: art. 24-25) of Councils and, respectively, the powers (exclusive, delegated: art. 26-40) of their executive bodies. The executive body of the council is the executive committee that is formed by the corresponding council for the term of its office and is chaired, respectively, by the village, settlement, and city head (art. 51 par. 5 LSGU). Executive bodies submit reports to the respective councils (art 26 par. 1 (11) LSGU). The council can cancel acts of its executive bodies which are illegal or/and fail to conform to the decisions of the corresponding council; moreover, it can adopt decisions on early termination of powers of the village, settlement, or city head, in cases provided by the law (art 26 par. 1 (15, 16) LSGU).

The attribution of legal personality to the Council and not to the territorial community (hromada at the local level) has been the target of criticism. The European Parliament, in its resolution of 11 February 2021 on the EU Association Agreement with Ukraine, called for the "introduction of the concept of a territorial public entity as a legal person..." (point 19). It has been pointed out that most European countries, as they operate under civil (Roman) law system, have granted legal personality to their municipalities. This includes both countries of Western Europe with a long-established position of local self-government, but also a large majority of post-Soviet ones, and all ex-communist countries, having adapted their legislation more recently. According to the soviet model, the hierarchical system of councils (soviets)

would be the sovereign, not the people, not the citizens and the citizenry in municipalities. The territorial basis of democracy, where the people is the sovereign and the resident citizens are the basis of local democracy, should be restored. And this would be made possible, when the territorial community itself, the hromada, will become a legal person and the council accomplish his own role and the prime body of the hromada, the body who exercises the right of local self-government and holds executive bodies accountable, in line with Art. 3 para. 2 of the Charter. On the other hand, the example of the UK, where legal personality is also attributed to the councils, not to communities, is a different case, characterized by plethora of multi-purpose and single-purpose entities at the local level and a different legal doctrine and tradition, where parliamentary sovereignty and, in addition, the flexibility offered by the common law and the courts can resolve many of the issues arising because of complex structures in English local self-government.

Proponents of granting legal personality to municipalities argue that it will protect the concept of local self-government in Ukraine and strengthen its sustainability through creating a clear and transparent status. It will also clarify the internal structure of municipalities, their relations with citizens and with the central authorities, and will improve governance. Recognition of municipalities as legal persons is an important building block for the full implementation of local self-government in Ukraine, with municipalities as legal subjects with their own responsibilities, rights and obligations, which are exercised on their behalf by their organs (the mayor, the council, the executive committee).

More specifically, the following advantages of legal personality to municipalities are mentioned: The risk of conflict of interests and corruption would be reduced; the rights of ownership (real estate and other assets) will be better protected since they will belong to the whole municipality, and not to any of its individual organs; it would enable the municipality to act as a coherent budgetary institution in the public finance system, with its own income, expenditure, and assets; The municipality would gain a proper standing and credibility in business relations; Legal personality will mean legal certainty when concluding and managing contracts and will enable the municipality to be a litigant in lawsuits, and thereby to defend and safeguard the interests of the municipality as a whole in court disputes. Finally, a robust status of municipalities would only help strengthen the Ukrainian statehood – just like decentralisation and local self-government in general are a guarantee of greater social cohesion and a means to strengthen the confidence of the citizens in the public system.

On the other hand, the Association of Ukrainian cities, the Committee of Verhovna Rada on the Organization of State Power, Local Self-Government, Regional Development and Urban Planning and other stakeholders are rather cautious about the attribution of legal personality to the territorial communities. Apart from fears of separatism and of the creation of abusive 'black' registrations of several entities, some legal concerns are raised: Territorial hromadas manage, either directly or through local government bodies, the property which is in communal property; they form, reorganize and liquidate communal companies, organizations and institutions, as well as exercise control over their activities; resolve other issues of local

significance referred by law to their competences. Concerning the civil relations of territorial hromadas, the Civil Code of Ukraine provides the following: Article 169: Legal forms of participation of territorial communities in civil relations: 1. Territorial communities act in civil relations on an equal footing with other participants in these relations. 2. Territorial communities may establish legal entities under public law (utility companies, joint utility companies, educational institutions, etc.) in the cases and in the manner prescribed by the Constitution of Ukraine and the law. 3. Territorial communities may establish legal entities of private law (business associations, etc.), participate in their activities on a general basis, unless otherwise provided by law. In addition, article 172 of the Civil Code ('Bodies through which territorial communities operate in civil relations') provides that 'territorial communities acquire and exercise civil rights and responsibilities through local self-government bodies within the limits of their competence established by law'.

It is argued that the recognition of legal capacity by a territorial hromada by virtue of a direct provision of the Civil Code of Ukraine (art. 169) excludes the need to obtain such status through the state registration as a legal entity under the public law. On the other hand, a territorial hromada is not a legal entity and is restricted to acquire and exercise civil rights and obligations through local government bodies within their competences established by law. This was also the conclusion reached by the Supreme Court in the composition with the panel of judges of the Administrative Court of Cassation: the decision of the Administrative Court of Cassation of the Supreme Court of 7 October 2020 in the case No. 362/2592/17 clearly stated that the recognition of the legal capacity by a territorial hromada through the Civil Code excludes the necessity of attributing a status as a legal entity through the state registration.

Another argument of opponents to the idea of legal personality for hromadas, is that such a change will require fundamental amendments and will cause multi-faceted complications regarding the category of the "legal entity" in the Civil Code. Besides, the implementation of such an idea would necessitate revisiting of a huge volume of legislation (municipal, civil, economic, tax, labour, administrative, budget, land and procedural) and the adjacent sectors, as well as by-laws. Besides, the pragmatic utility and demand of such changes is being questioned: In case the territorial community will be formally founded as a legal entity, local governments would not benefit from it and would have complications for their activities. The attempt to implement the idea to grant legal personality to the hromadas, would complicate poorly regulated and controversial issues regarding all legal entities in the public law. Moreover, it would cause serious practical difficulties. For instance, it has been pointed out that one legal entity cannot technically have several treasury accounts and the transition to such a model provides for a long transition period of at least two years, during which the executive bodies will continue their operation.

Conclusion: The current legal status of hromadas in Ukraine and the legal personality of Councils keeps the letter of the Charter and does not constitute a violation of its provisions and especially of article 3. However, in terms of the spirit of the Charter as this is perceived

and implemented within the legal systems and democratic traditions of continental Europe, granting the legal personality to the territorial community of hromada, instead of the prime local self-government body, which is the council, would facilitate the full alignment of Ukrainian local self-government with the Charter. Finally, in terms of reform policy, Ukraine could benefit from the experience and good practices of other countries (like Poland) who abandoned the old, soviet-inspired system and established a full-fledged system of democratic multi-level governance according to continental European standards. Transition to this new system would, of course, require some time and thorough preparation, but an integrated and clear-cut system of local self-government, would certainly foster state stability and administrative efficiency.

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