

## LOCAL SELF-GOVERNMENT IN UKRAINE

*Yehor Kyian, Ihor Petrenko*

*November 2018*

### **Project**

The project "Promoting transparency and implementation of anti-corruption measures in state-owned enterprises and local governments in Ukraine" is implemented by the Institute for Economic and Social Reforms in Slovakia (INEKO) in partnership with the International Centre for Policy Studies (ICPS). The initiative is financially supported by the Official Development Assistance of the Slovak Republic (SlovakAid). The project aims to improve the efficiency of the state administration, self-government and civil society in the area of creation and oversight of regional policies, administration of state-owned enterprises, and monitoring of budgets and information openness of local authorities in Ukraine.

### **Background**

Historically, issues related to authorities and governance have always been aroused a considerable interest in society. Therefore, the topic of improving local self-government is now one of the main issues for every citizen of a particular state, including Ukraine on the way to the European community.

According to Article 1, 2 of the Law of Ukraine "On Local Self-Government in Ukraine", local self-government in Ukraine is a state-guaranteed right to deal with the local issues independently or under the responsibility of the authorities and local self-government officials. This right is given within the Constitution and laws of Ukraine to the territorial community - residents of a village or a voluntary association of residents of several villages, towns, cities.

Local self-governance is carried out by the territorial communities of villages, towns, cities both directly and through rural, town, city councils and their executive bodies, as well as through district and oblast councils, that are representing the common interests of territorial communities of villages, towns, cities.

The principles of local self-governance in Ukraine are:

- people's authority;
- legality;
- publicity;
- collegiality;
- combination of local and state interests;
- eligibility;

• legal, organizational, material and financial independence within the powers defined by this and other laws;

- accountability and responsibility to territorial communities of their bodies and officials;
- state support and guarantees of local self-government;
- judicial protection of the rights of local self-government;

The system of local self-government includes:

- territorial community;
- rural, settlement, city council;
- rural, settlement, city head;
- executive bodies of the village, settlement, city councils;
- rayon and oblast councils representing the common interests of territorial communities of villages, settlements, cities;
- bodies of self-organization of the population.

As an element of the system of local self-government, local authorities serve as an integral part of executive power in Ukraine. In turn, it should be noted that the local authorities consist of such bodies as:

- local state administrations;
- territorial subdivisions of central executive bodies;

The main ones are local state administrations.

Local state administrations are state bodies of executive power, which have the right to represent the interests of the state and adopt normative acts within their competence on behalf of the state, which in turn act on a certain territory of the corresponding administrative-territorial unit. These bodies are guided by the Constitution of Ukraine, relevant acts of the President of Ukraine and the Cabinet of Ministers.

The composition of local state administrations is formed by the heads of local state administrations. Within the budget funds allocated to the maintenance of the relevant local state administrations, as well as taking into account the requirements of Article 18 of the Law of Ukraine “On the Principles of State Regulatory Policy in the Field of Economic Activity”, their heads determine the structure of local state administrations.

The local state administration consists of: the head, the first deputy, deputies, heads of departments, departments, other structural divisions and their apparatus.

The activities of local authorities are aimed at meeting the public needs of citizens and, first of all, associated with obtaining of vital services.

## Ukrainian legislation on local governments

- Chapter 14 of the Constitution of Ukraine is devoted to local self-government.

• In addition to the Constitution, the legal basis of local self-government in Ukraine is the Law of Ukraine "On Local Self-Government in Ukraine", laws and subordinate legal acts adopted on their basis, as well as acts of local self-government, which are adopted within their competence.

• The basic law defining status, the main tasks and legal principles of local administrations is the Law of Ukraine "On Local State Administrations".

• The Law "On Public Service" is also important. It regulates relations that arise in connection with joining the civil service, its passage and termination, determines the legal status of a civil servant.

Local state administrations in the respective territory interact with rural, settlement and city councils, their executive bodies and village, settlements and city mayors, and promote their own powers of local self-government, in particular, in addressing issues of economic, social and cultural development of the respective territories, strengthening of material and financial base of local self-government, control the fulfillment of the powers given to them by executive bodies according to the law, consider the proposals of deputies, local self-government bodies and officials in their work.

The heads of regional state administrations inform the President of Ukraine and the Cabinet of Ministers of Ukraine and annually report to them on the implementation of the powers entrusted to them by the local state administration, as well as on the socio-political, socio-economic, ecological and other situation in the respective territory, make proposals on improvement of the current legislation of Ukraine, practice of its realization and system of state administration.

## Local government competencies and tasks

**Territorial communities of the villages, settlements and cities**, according to the Article 143 of the Constitution of Ukraine, directly or through the local self-government bodies formed by them, manage the property that is in communal ownership; approve socio-economic and cultural development programs and control their implementation; approve budgets of the corresponding administrative-territorial units and control their implementation; establish local taxes and fees in accordance with the law; ensure holding of local referendums and implementation of their results; form, reorganize and liquidate communal enterprises, organizations and institutions, as well as control their activities; solve other issues of local importance, assigned by law to their competence.

**Oblast and district councils** approve programs of socio-economic and cultural development of the respective oblasts and districts and control their implementation; approve rayon and oblast budgets, which are formed from the state budget funds for their respective distribution between territorial communities or for implementation of joint projects and funds borrowed on a contractual basis from local budgets for implementation of joint socio-economic and cultural programs, and control their implementation; decide other issues assigned by law to their competence.

Local self-government bodies may be provided by law with certain powers of executive authorities. The state finances the full exercise of these powers at the expense of the State Budget of Ukraine or by assigning certain state taxes to the local budget in accordance with the law, transfers the relevant state-owned facilities to local self-government bodies.

**The tasks of state administrations** are defined by Article 2 of the Law "On Local State Administrations", namely:

- the implementation of the Constitution, laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, and other executive bodies of a higher level;
- legality and order of law, observance of the rights and freedoms of citizens;
- implementation of state and regional programs of socio-economic and cultural development, environmental protection programs, and in places of compact residence of indigenous peoples and national minorities - also programs of their national-cultural development;
- preparation and execution of corresponding budgets;
- report on the implementation of relevant budgets and programs;
- interaction with local self-government bodies;
- implementation of other powers provided by the state, as well as those delegated by the respective councils.

**The powers of the executive bodies of village and city councils** cover the following areas of activity:

- socio-economic and cultural development, planning and accounting;
- in the areas of budget, finance and prices;
- regarding communal property management;
- in the area of housing and communal services, household, trade services, catering, transport and communications;
- in construction;
- education, health care, culture, physical education and sports;
- on the regulation of land relations and the protection of the environment;
- social protection of the population;
- in the field of foreign economic activity;
- in the field of defence work
- regarding the issues of administrative-territorial system;
- in ensuring the rule of law, the protection of the rights, freedoms and legitimate interests of citizens, etc.

**Local state administrations execute state control** within the limits defined by the Constitution and laws of Ukraine in the respective territories for:

- preservation and rational use of state property;
- the state of financial discipline, accounting and reporting, execution of state contracts and obligations to the budget, proper and timely reimbursement of damage caused to the state;
- use and protection of land, forests, subsoil, water, atmospheric air, flora and fauna and other natural resources;
- protection of historical and cultural monuments, preservation of housing stock;
- compliance by manufacturers of products with standards, specifications and other requirements related to its quality and certification;
- compliance with sanitary and veterinary rules, collection, utilization and disposal of industrial, household and other wastes, observance of the rules of land improvement;
- compliance with the rules of trade, domestic, transport, municipal services, consumer protection laws;
- compliance with legislation on science, language, advertising, education, culture, health, maternity and childhood, families, youth and children, social protection of the population, physical culture and sports;
- labor protection and timely and not below the minimum wage determined by the state;
- observance of public order, rules of technical operation of transport and traffic;
- compliance with the law on state secrets and information;
- compliance with the legislation on the National Archival Fond and archival institutions;
- for compliance with the contractual obligations of developers, whose activities are related to attracting funds from individuals to the construction of multi-apartment houses;
- implementation of engineering and technical measures of civil protection (civil defense) during the construction of buildings, structures, placement of other economic objects, engineering and transport communications;
- the status of protective structures for civil protection (civil defense).

### **Material and financial basis of local self-government**

According to Article 142 of the Constitution of Ukraine, the material and financial basis of local self-government are movable and immovable property, revenues of local budgets, other funds, land, natural resources owned by the territorial communities of villages, settlements, cities, districts in towns, as well as their objects of joint property, managed by district and regional councils.

Territorial communities of villages, settlements and cities can unite communal property objects on a contractual basis, as well as budget funds for joint projects, or for co-financing (maintenance) of communal enterprises, organizations and institutions, and create appropriate bodies and services for this purpose.

The state participates in the formation of revenues of local self-government budgets, financially supports local self-government. Expenditures of local self-government bodies, which arose as a result of state authorities' decisions, are compensated by the state.

Local budgets are the financial base of local self-government and the amount of resources accumulated in these budgets depends on how effective the local authorities will fulfill their responsibilities.

**Annex. The detailed list of issues under the competencies of local governments**

**Exclusively at plenary sessions of a village, settlement, city council**, according to the Part 1 of Article 26 of the Law “On Local Self-Government in Ukraine”, the following issues are discussed:

- 1) approval of the regulation of the council;
- 2) formation and liquidation of permanent and other commissions of the council, approval and change of their composition, election of chairmen of commissions;
- 3) formation of the executive committee of the council, determination of its number, approval of the personal composition; making changes to the executive committee and its dissolution;
- 4) election to the office and dismissal of the secretary of the council, provided by this Law;
- 5) approval by the proposal of the village, settlement, city mayor of the structure of executive bodies of the council, the total number of the apparatus of the council and its executive bodies in accordance with the standard states approved by the Cabinet of Ministers of Ukraine, expenses for their maintenance;
- 6) formation of other executive bodies of the council on the submission of the village, settlement, city heads;
- 7) approvment of the work plan of the council and hearing the report on its implementation taking into account the requirements of Article 32 of the Law of Ukraine “On the Principles of State Regulatory Policy in the Field of Economic Activity”;
- 8) the establishment of the audiovisual (electronic) media of the relevant council, the appointment and dismissal of their leaders;
- 9) hearing of the report of the village, settlement, city heads on the activity of executive bodies of the council, including the annual report on the implementation of the state regulatory policy by the executive bodies of the relevant council;
- 10) making a decision on distrust of the village, town, city head;
- 11) hearing of the reports of the standing commissions, the heads of the executive bodies of the council and the officials whom it appoints or approves;
- 12) hearing of the reports of deputies on work in the council, execution of their assignments;
- 13) consideration of requests of deputies, making decisions on requests;
- 14) making decisions on early termination of powers of a deputy of the council provided by law;
- 15) cancellation of acts of executive bodies of the council that do not conform to the Constitution or laws of Ukraine, other legislation acts, decisions of the relevant council, adopted within its authority;
- 16) making a decision on the early termination of the powers of the village, settlement, city head in cases stipulated by this Law;
- 17) making a decision on holding a local referendum;

18) adoption in accordance with the legislation of decisions on the organization of referendums and elections of bodies of state authority, local self-government and of village, town, city mayor;

19) making of decisions on granting some powers of self-governments to bodies of self-organization of population. These decisions can also relate to transfers of money, material and technical resources, and other resources needed to ensure these powers;

20) making of decisions on establishment of associations or membership in them and in other forms of voluntary associations of local self-governance bodies, as well as of decisions on end of the membership in such the associations;

21) approval of agreements on an association for Euro-regional cooperation, decision on establishment of the association for the Euro-integration cooperation, on membership in this association and its end, approval of a chapter of the association for Euro-regional cooperation and amendments to it;

22) making of decisions on membership in European association of territorial cooperation and on the end of such the membership;

23) approval of programs of socio-economic and cultural development, of relevant administrative territorial units, target programs and other issues on local self-governance;

24) approval of a local budget, amendments to it; approval of a report on fulfilment of a relevant budget;

25) determination of local taxes and dues in accordance with the Tax Code of Ukraine;

26) creation of target funds, approval of decrees on these funds;

27) making of decisions on local loans;

28) making of decisions on money transfer from a relevant local budget;

29) making of decisions on providing benefits for local taxes and duties, and land tax in accordance with the current legislation;

30) determination of income part to be paid to local budget by municipal enterprises, institutions and organizations owned by relevant territorial communities;

31) making of decisions on expropriation of municipal property in line with the law; approval of local programs of privatization, as well as a list of objects of the municipal property, which shall not be privatized; determination of necessity, procedure and conditions of the privatization of municipal property; purchase of privatized property in line with the legislation; inclusion of objects expropriated in the course of privatization in the list of municipal property after a buy sell agreement was cancelled or qualified as invalid in accordance with the legislation; concession of municipal property; creation, liquidation, reorganization or the reshaping of municipal enterprises, institutions and organizations of relevant territorial community.

Self-governments make decisions on reorganization or liquidation of municipal educational institutions.

32) making of decisions on determination of criteria for mandatory creation of a supervisory board of municipal unitary enterprises and business companies which have more than 50% of its statutory shares belonged to territorial community; approval of a procedure for establishment of the supervisory board, a procedure for appointment of members of the supervisory board of the municipal unitary enterprise; determination of exclusive competences of the supervisory board of the municipal unitary enterprise; determination of responsibilities of independent members of the supervisory board of municipal unitary enterprises and business companies which have more than 50% of its statutory shares belonged to territorial community;

33) determination of selection criteria for independent auditor and criteria for establishment a mandatory obligation for municipal unitary enterprises and business companies which have more than 50% of its statutory shares belonged to territorial community to have financial reports (including consolidated ones) checked by independent auditor, as well as approval of a procedure for such the check and selection of the independent auditor;

34) making of decisions on transfer of powers on management of municipal property of relevant territorial community to other bodies; determination of a scope of these powers and conditions of their use;

35) if necessary creation of bodies and services to implement projects or finance (maintenance) municipal enterprises, institutions and organizations together with other municipal bodies; determination of powers of such the bodies (services);

36) making of decisions in line with legislation on establishment of joint companies, including those with foreign investments, by municipal enterprises;

37) making of decisions on approval of cooperation of territorial communities that include territorial community of a village and town in forms set out in the Article 4 of the Law of Ukraine "On Cooperation of Territorial Communities"; approval of draft agreement on cooperation and other decisions related to activities under the Law of Ukraine "On Cooperation of Territorial Communities";

38) evaluation of reports on cooperation of territorial communities that include territorial community of a village and town under the Law of Ukraine "On Cooperation of Territorial Communities";

39) making of decisions on regulation of land relationship in accordance with the legislations;

40) approval of land tax rates in accordance with the Tax Code of Ukraine;

41) making of decisions in line with the legislation on permits for special use of local natural resources, as well as on cancellation of such the permits;

42) making of decisions on organization of territories and objects of local natural reserve fund and other territories, that are under special regime of defense; submission of proposals on announcement of natural and other objects, that have ecological, cultural or science value, as monuments of nature, history of culture under protection of a law to relevant authorities; announcement of "a silence season" in places of mass breeding and raising of breeds by wild animals with limited business activities and production of objects of animal world;

43) providing in accordance with the legislation a consent to the placement of new facilities in the territory of the village, settlement, city, including places and objects for the placement of waste, the sphere of environmental impact of which includes the relevant territory in accordance with the current regulations;

44) establishment in accordance with the law of the institutions for the provision of free primary legal aid at the expense of the local budget, appointment and dismissal of the heads of these institutions, involvement of individuals or legal entities of private law in the manner prescribed by the law to provide free primary legal aid;

45) listening to the information from the prosecutors and heads of the bodies of the National Police about the state of law, the fight against crime, public order and the results of activity in the territory;

46) making decisions on issues of the administrative-territorial system within the limits and in the order determined by this and other laws;

47) approving in accordance with the established procedure of local city development programs, general development plans of the relevant settlements, other city-planning documentation;

48) approving of the agreements concluded by the village, settlement, city major on behalf of the council, on issues related to its exclusive competence;

49) establishing of the rules on improvement of the territory of the settlement in accordance with the legislation, ensuring cleanliness and order in it, trade in the markets, keeping quiet in public places, for violation of which administrative liability is stipulated;

50) establishing of a ban on the sale of beer (except non-alcoholic), alcoholic, low-alcohol beverages, wines by businesses (except restaurants) at a certain time of the day in the territory of the relevant administrative-territorial unit;

51) adoption, within the limits determined by law, of decisions on issues of combating natural disaster, epidemics, epizootics, for violation of which administrative liability is stipulated;

52) definition of territories in which potentially dangerous measures can be carried out in the presence of civilian population with the participation of the personnel of the Armed Forces of Ukraine, other military formations and law-enforcement bodies with use of armaments and military equipment;

53) making decisions related to the creation of special free and other zones, changes in the status of these zones, making proposals on these issues to relevant state bodies; granting consent to the creation of such zones on the initiative of the President of Ukraine or the Cabinet of Ministers of Ukraine;

54) making a decision on the pre-term termination of powers of the bodies of territorial self-organizations of the population in cases stipulated by this Law;

55) approval of the charter of territorial community;

56) approval in accordance with the law of the Regulation on the content, description and procedure of the use of symbolism of territorial community;

57) making decisions on the implementation of the provisions of Articles 7, 11, 12, 2, 24 of the Law of Ukraine "On the Principles of State Language Policy";

58) granting consent for the transfer of objects from the state into communal ownership and making decisions on the transfer of objects from communal to state ownership, as well as for the acquisition of state-owned objects;

59) the establishment of a municipal emergency rescue service in accordance with the legislation;

60) approving the consultant of the council member in accordance with the law on “Regulations on the assistant counselor of the council member and the description of the certificate of assistant”.

61) resolving the issues in the sphere of hazardous waste management in accordance with the legislation;

62) determination on a competitive basis of legal entities that carry out collection and transportation of household wastes within a certain territory with specially equipped vehicles for this purpose;

63) determination of ways to stimulate the use of electric vehicles and other environmental modes of transport;

64) approval of requirements for the arrangement of parking areas for vehicles according to the light of norms, standards in the field of improvement of settlements, state building norms, specifications, Road Rules and other regulatory documents;

65) defining the fee for access to construction, transport, power, cable duct telecommunication, house distribution network of communal property in accordance with the Law of Ukraine "On Access to Construction, Transport, Electricity for Construction of Telecommunication Networks".

**Exclusively at the plenary sessions of the village, settlement, city council of the amalgamated territorial community** formed in accordance with the Law of Ukraine "On Voluntary Amalgamation of Territorial Communities", in accordance with Part 3 of the Law "On Local Self-Government in Ukraine", except for the issues mentioned above, the following issues are discussed:

1) the formation of the village elder districts;

2) approval of the Provision on the head of the village elder;

3) making a decision on the early termination of the authority of the village elder in cases provisioned by the Law.

**Exclusively at the plenary sessions of city councils (towns with district division)**, in addition to the aforementioned issues, in accordance with part 2 of the Law "On Local Self-Government", the following issues are discussed:

1) determination of the scope and limits of authority executed by district councils in cities (in case of their creation) and by their executive bodies in the interests of territorial communities of rayons in cities;

2) establishment of norms of centralization of funds from the land tax on special budget accounts of the city districts.

**Exclusively at plenary sessions of the district and regional councils** the following issues are discussed:

1) upon the proposal of the territorial communities, deciding on the conduction of an advisory survey on issues of their common interest;

2) execution, in accordance with the law, of powers to organize all-Ukrainian referendums and elections of state authorities and local self-government bodies;

3) approval of socio-economic and cultural development programs in accordance with the district, oblast, target programs on other issues, listening to reports on their implementation;

- 4) approval of district, regional budgets, changes to them, approval of reports on their implementation;
- 5) distribution of funds transferred from the state budget in the form of subventions, and district councils - in accordance with the Law, the distribution of transfers of equalization between the budgets of cities of rayon significance, villages, settlements;
- 6) solving the issues of management of joint-ownership objects that are in the management of regional and district councils;
- 7) adoption of decisions on issues of administrative-territorial system within the limits and in accordance with the procedure established by law;
- 8) election of the chairman of the council, deputy chairman of the council, dismissal of position;
- 9) on the proposal of the chairman of the board of the structure, approval of the number of executive board of the council, the cost of maintaining the council and its executive machinery.