



TECHNICAL AREA (SECTORAL) PROFILE ORGANISATIONAL AND LEGAL FRAMEWORK OF LOCAL SELF-GOVERNANCE

**ASSOCIATION OF UKRAINIAN CITIES
DIALOGUE Project**

**Technical Area (Sectoral) Profile
ORGANISATIONAL AND LEGAL
FRAMEWORK OF LOCAL SELF-
GOVERNANCE**

Kyiv – 2012

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I. Brief Technical Area Description

The local self-governance tradition that dated back to the Magdeburg Law was interrupted in Ukraine during the Communist rule. Today, the right of local communities to local self-governance is specified in the Constitution and the European Charter of Local Self-Government has been ratified.

Local government authorities in Ukraine have the right to decide on issues of local importance.

The system of local self-governance consists of village, town and city councils and their executive agencies and village, town and city mayors. In some of the larger cities, which are divided into city districts, there are also city district councils. These councils have their executive agencies.

The village, town, and city Head (Mayor) presides at meetings of the corresponding council and heads its executive agency appointed by the council upon the proposal of the Head. The second person on the council hierarchy is the Secretary of the Council, who is elected from among the deputies. Secretary acts as the Head in case the latter is absent.

The council makes legal and regulatory decisions to approve the local budget, annual and strategic plans of the territorial development, regarding managing of municipal property, establishing individual local taxes and regulating their rates. Executive agencies of the council carry out executive functions of the local self-governance in these and other areas. They also perform certain state-provided authority of public executive power - particularly in the areas of education, health care, social welfare, culture, etc.

To realize common interests of the local communities rayon and oblast councils are elected to administer jointly owned by the local communities entities (hospitals, stadiums, theaters, etc.), approve rayon and oblast budgets and development plans for their corresponding territories. Rayon and oblast councils that also represent local self-governance do not have executive agencies of their own. According to the Constitution, these functions are to be performed by rayon and oblast state administrations.

Cities of Kyiv and Sevastopol have special local self-governance systems. In Kyiv, under a special Law on the Capital City of Kyiv, population elects the Kyiv City Mayor, however executive agencies of the Kyiv City Council are headed by the Head of Kyiv City State Administration to be appointed by the President of Ukraine.

In the city of Sevastopol the local self-governance system is the same as the system of local self-governance in the oblast.

II. Current legal framework for local government activities in the technical area of Organisational and Legal Framework of Local Self-Governance

Laws of Ukraine

1. Constitution of Ukraine (Articles 7, 85 (Paragraphs 29-30), 118-119; Chapters IX and XI), passed at the Fifth Session of the Verkhovna Rada of Ukraine on December 28, 1996 as amended by the Law of Ukraine of December 08, 2004 #2222-IV.
2. European Charter of Local Self-Governance, ratified by the Law of Ukraine of July 15, 1997 # 452/97-BP (452/97-BP).
3. Law of Ukraine “On Local Self-Governance in Ukraine” of May 21, 1997 # 280/97-BP.
4. Law of Ukraine “On Local State Administrations” of April 09, 1999 # 586-XIV.
5. Law of Ukraine “On the Capital of Ukraine – Kyiv Hero City” of January 15, 1999 # 401-XIV.
6. Law of Ukraine “On Elections of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils and Village, Town and City Mayors” of July 10, 2010 # 2487-VI.
7. Law of Ukraine “On the Status of Members of Local Councils” of July 11, 2002 # 93-IV.
8. Law of Ukraine “On Service in Local Government Agencies” of June 07, 2001 # 2493-III.
9. Law of Ukraine “On Public Service” of December 16, 1993 # 3723-XII.
10. Law of Ukraine “On Bodies of Self-Organisation of Citizens” of July 11, 2001 # 2625-III.
11. Law of Ukraine “On Local Self-Governance Associations” of April 16, 2009 # 1275-VI.
12. Law of Ukraine “On Ukraine-Wide and Local Referendums” of July 03, 1991# 1286-XII.
13. Law of Ukraine “On Procedures for Covering the Activities of State Executive Agencies and Local Government Bodies in Ukraine By Mass Media” of September 23, 1997 # 539/97-BP.
14. Law of Ukraine “On Access to Public Information” of January 13, 2011 # 2939-VI.
15. Law of Ukraine “On the Actions to Combat Corruption” of April 7, 2011 #3206-VI

16. Law of Ukraine “On Non-paid Legal Assistance” of April 2, 2011 #3460-VI.
17. “On Amending Article 4-1 of the Law of Ukraine “On the Permit System in the Area of Economic Activities” concerning the decisions of representative agencies of local governments #4403-VI of February 10, 2012.

Decrees of the President of Ukraine

1. Decree #33/2012 of January 25, 2012
On the Mechanism for Holding Special Inspection of Data about the Persons Who Apply to Positions in Civil Service or Local Government Service.

Resolutions of the Constitutional Court of Ukraine

1. Resolution of the Constitutional Court of Ukraine on the Constitutional Inquiry of 51 National Deputies of Ukraine on the official interpretation of the provisions of Article 10 of the Constitution of Ukraine on the use of the State Language by state executive bodies and local government bodies, and on its use in the educational process in educational establishments of Ukraine (Case # 1-6/99 on the use of the Ukrainian language) of December 14, 1999 # 10-рп/99.
2. Resolution of the Constitutional Court of Ukraine on the Constitutional Inquiry of 50 National Deputies of Ukraine on the official interpretation of Paragraph Four of Article 12 of the Law of Ukraine “On Local Self-Governance in Ukraine” on combining positions of a village, town and city mayor with the warrant of a Deputy of the Verkhovna Rada of the Autonomous Republic of Crimea (Case # 1–11/2004 on combining positions of a village, town and city mayor with the warrant of a Deputy of the Verkhovna Rada of the Autonomous Republic of Crimea) of May 20, 2004 # 12-рп/2004.
3. Resolution of the Constitutional Court of Ukraine on the Constitutional Inquiry of the President of Ukraine and he Constitutional Inquiry of 56 National Deputies of Ukraine on the official interpretation of the provisions of Paragraphs One, Two, Three, and Four of Article 118, Paragraph Three of Article 133, Paragraphs One, Two, Three of Article 140, Paragraph Two of Article 141 of the Constitution of Ukraine, Article 23, Paragraph 3 of Part One of Article 30 of the Law of Ukraine “On Public Service”, Articles 12, 79 of the Law of Ukraine “On Local Self-Governance in Ukraine”, Articles 10, 13, and 16, Paragraph 2 of Chapter VII “Closing Provisions” of the Law of Ukraine “On Capital of Ukraine – Kyiv Hero City”, Articles 8, 10 of the Law of Ukraine “On Local State Administrations”, of Article 18 Law of Ukraine “On Service in Local Government Bodies” (Case # 1-45/2003 on peculiarity of exercising the state executive authority and local self-governance in the city of Kyiv) of December 25, 2003 # 21-рп/2003.

4. Resolution of the Constitutional Court of Ukraine on the Constitutional Inquiry of the Ministry of Internal Affairs on the official interpretation of the provision of Part One of Article 39 of the Constitution of Ukraine on timely notification of state executive bodies or local government bodies about holding meetings, rallies, marches and demonstrations (Case # 1-30/2001 on timely notification about peaceful meetings) of April 19, 2001 # 4-рп/2001.
5. Resolution of the Constitutional Court of Ukraine on Constitutional Inquiry of 49 National Deputies of Ukraine and the Executive Committee of the Vinnytsya City Council on the official interpretation of the provisions of Articles 38, 78 of the Constitution of Ukraine, Articles 1, 10, and 12, Part Two of Article 49 of the Law of Ukraine “On Local Self-Governance in Ukraine” (Case # 1-25/99 on combining the positions of a National Deputy of Ukraine and City Mayor), of July 06, 1999 # 7-рп/99.
6. Resolution of the Constitutional Court of Ukraine on the Constitutional Inquiry of the Kharkiv City Council on the official interpretation of the provisions of Part Two of Article 19, Article 144 of the Constitution of Ukraine, Article 25, Part Fourteen of Article 46, Part One, Ten of Article 59 of the Law of Ukraine “On Local Self-Governance in Ukraine” (Case # 1-9/2009 on nullification of local government ordinances) of April 16, 2009 # 7-рп/2009.
7. Resolution of the Constitutional Court of Ukraine on the Constitutional Inquiry of 47 National deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the provisions of Article 23 of the Law of Ukraine “On Public Service”, Article 18 of the Law of Ukraine “On Service in Local Government Bodies”, Article 42 of the Law of Ukraine “On Diplomatic Service” (Case # 1-16/2007 on age limit for public service and service in local government bodies) of October 16, 2007 # 8-рп/2007.

Resolutions of the Cabinet of Ministers of Ukraine

1. “On Steps to Improve Qualifications of Employees off State Executive Bodies and Local Government Bodies in Fighting Corruption” of June 02, 2003 # 828.
2. “On Amending the List of Positions of Journalists of State-Owned and Communally-Owned Mass Media, Who Have the Same Status as the Supervisors and Specialists of the Secretariat (Staff) of the corresponding State Executive Body or Local Government Body” of November 26, 2003 # 1843.
3. “On Amending the Procedures for Exercising Control Over Implementation of Delegated State Executive Functions by Local Government Bodies” of 05.07.2004 # 835.
4. “On Approving the Procedures for the Use of an Electronic Digital Signature by State Executive Bodies, Local Government Bodies, State-Owned

- Enterprises, Institutions and Organisations” of October 28, 2004 # 1452.
5. “On Centers for Re-Training and on-the-Job Training of Employees of State Executive Bodies, Local Government Bodies, State-Owned Enterprises, Institutions and Organisations” of December 16, 2004 # 1681.
 6. “On Amending the Program for Training and Encouraging Youth to the Public Service and Service in Local Government Bodies, Creation of Conditions for Professional Career Development” of 16.11.2005 # 1095.
 7. “Regulations on Inter-Governmental Commissions on Local Self-Governance at the Cabinet of Ministers of Ukraine” of January 16, 2007 # 21-00.
 8. “On Approving Model Manning Schedules for Local Government Bodies” of February 07, 2007 # 174.
 9. “On Approving the Regulations on the Council of Regional development and Local Self-Governance” of April 02, 2009 # 309.
 10. “Enhancing Interaction between State Executive Bodies and Local Government Bodies in Preparation and Passage of Regulations and Ordinances” of May 23, 2009 # 531.
 11. “On Approving the Program for Training and Encouraging Youth to the Public Service and Service in Local Government Bodies, Creation of Conditions for Their Career Development” of September 10, 2009 # 1444.
 12. “Some Issues Related to the Organisation and Conducting the Examination of Persons Who Apply to Positions Associated with the Implementation of State Functions and Local Government Functions” of December 08, 2009 # 1432.
 13. «On Amending Paragraph 6 of the Procedures of Application of an Electronic Digital Signature by State Executive Bodies, Local Government Bodies, State-Owned Enterprises, Institutions and Organisations” of January 13, 2010 # 31.
 14. “On Amending the Procedures for Coordination of Activities of State Executive Bodies and Local Government Bodies on Issues Related to Keeping within the Regimes at the State Border” of June 02, 2010 # 391.
 15. “On Approving the Regulations of the System for Training, Re-Training and on-the-Job Training of Public Servants and Local Government Officials” of July 07, 2010 # 564.
 16. Decree #1274 of December 05, 2011 ‘On the Registry of Administrative Services”

Instructions of the Cabinet of Ministers of Ukraine

1. “On Ranking the Position of a State Registrar at the Corresponding Category of Public Servants and Positions in Local Government Bodies” of 22.09.2004 # 673.
2. “ On Ranking the Position of an Administrator of a City Council, Rayon, Kyiv

and Sevastopol City Rayon Administration at the Corresponding Category of Public Servants and Positions in Local Government Bodies” of February 22, 2008 # 98.

3. “On Ranking Positions in Local Government Bodies to the Corresponding Category of Positions” of June 04, 2008 # 794.
4. “On Approving the Concept of Setting up a System of on-the-Job Training of Local Government Officials and Local Council Members” of April 08, 2009 # 385.
5. “On Providing Information to Local Government Bodies” of July 17, 2009 # 798.
6. “On Approving” of July 29, 2009 # 900.
7. “On Approving the Action Plan for the Period till 2011 for the Implementation of the Concept of Setting Up a System of on-the-Job Training of Local Government Officials and Local Council Members” of September 23, 2009 # 1134.
8. “On Approving the Action Plan for the Implementation of the Concept of Local Self-Governance Reform” of December 02, 2009 # 1456.
9. “On Placing Certain Local Self-Governance Associations” of December 29, 2009 # 1646.
10. “On Ranking Positions in Local Government Bodies to the Corresponding Category of Positions” of February 17, 2010 # 225.
11. “On Enhancing of Interaction between Local Bodies of the State Executive and Local Self-Governance Associations” of September 06, 2010 # 1797-p.

III. Key problem issues in the sector and potential ways to resolve them

#	Problem Issue	Ways to Resolve It	Notes
<i>Problem issues to be resolved as a first priority</i>			
1	The current territorial foundation of local Self-Governance at the basic level is not sufficient for the material, financial, infrastructure and staffing capacity of local government bodies in villages, towns and cities (first of all for rayon significance cities) to perform their authority.	Perform the administrative and territorial reform in the country coupled with the consolidation of administrative and territorial entities at the basic level. The Cabinet of Ministers has to approve a concept document on reforming the territorial arrangement of government institutions and pass a corresponding law on administrative and territorial arrangement.	The corresponding Concept of Local Self-Governance Reform was approved by Resolution #900 of the Cabinet of Ministers of Ukraine of July 29, 2009. AUC Board approved its own Concept by the Board Resolution of March 1, 2011.
2	Although the Law of Ukraine “On Local Self-Governance Associations” provides the requirement for state executive agencies including local state administrations should hold consultations with local government associations in the course of preparations of resolutions on local and regional development, such consultations have been a very rare phenomenon.	The legislation should stipulate sanctions for passing documents without prior consultations with local government associations. For example, this may serve as a ground for the nullification of such documents by the court.	
3	The principle of organisational autonomy of local government bodies has not been implemented. There is a requirement for local government manning schedules to comply with the model manning schedules approved by the Cabinet of Ministers of Ukraine.	Exclude the provision with the requirement for local governments to abide with the model manning schedules approved by the Cabinet of Ministers of Ukraine from Article 26 Law of Ukraine “On Local Self-Governance in Ukraine”. Limitations imposed on local budget expenditures to support the executive staff would be a more acceptable solution.	The problem is partly resolved by introduction by the Ministry of Finance of the norms for local governments provision.
4	The existence of the so-called “Russian-dolls” (imbedded administrative and territorial units) not envisioned by the Constitutions leads to conflicts in the system of local self-governance in those cities, which include other cities, towns and villages with their own local government bodies.	Perform the reform of the territorial arrangement of government institutions based on the concept approved by the Cabinet of Ministers.	Under the AUC proposal the Ministry of Regional Development foreseen the mechanism of their liquidation in the draft law “On amalgamation of territorial communities”

#	Problem Issue	Ways to Resolve It	Notes
5	Lack of a system of checks and balances in the local self-governance system – a village, town or city council can pass a vote for the pre-term termination of the mayor's authority, whereas a mayor can not dismiss the council.	Make corresponding amendments to the Law of Ukraine "On Local Self-Governance in Ukraine" to withdraw the right for the pre-term termination of village, town and city mayor's authority from local councils and to give the right for councils to pass ordinance to initiate a local referendum on pre-term termination of mayor's authority and the right for a mayor to make a decision to initiate a referendum on pre-term termination of the authority of the council.	
6	Absence of a special legal status and a certain level of official immunity for a village, town and city mayors leads to abuse, whereby a mayor can be sued for political reasons.	Develop and pass the Law of Ukraine "On the Status of Village, Town and City Mayor".	DIALOGUE prepared the draft law.
7	The principle of subsidiarity is not observed in the course of distribution of authority between local governments and local agencies of the state executive. Some local government authority of village, town and city councils stipulated in the Law of Ukraine "On Local Self-Governance in Ukraine" overlap with the similar authority of local state administrations stipulated by the Law of Ukraine "On Local State Administrations".	Perform the reform of the territorial arrangement of government institutions to give local state administrations only the control and oversight functions. One should make amendments to the Constitution of Ukraine and pass the Laws "On Local Self-Governance in Ukraine" and "On Local State Administrations".	
<i>Problem issues to be resolve as a second priority</i>			
8	The current system of elections of local council members and village, town and city mayors often leads to the majority in local councils who are in opposition to the village, town and city mayors. In case such an opposition constitutes more than 2/3 of councils members they may vote for the pre-term termination of mayor's authority for any reason and then the council secretary who has not been authorised by a community starts to perform the functions of the mayor.	Return to the majoritarian system of electing members of village, town and city councils through making corresponding amendments to the Law of Ukraine "On Elections of Deputies of the Verkhovna Rada of Crimea, Local Councils and Village, Town and City Heads".	

#	Problem Issue	Ways to Resolve It	Notes
9	No mechanism for state control of adherence of local government ordinances to the Constitution and laws of Ukraine.	Introduce the state control of adherence of local government ordinances to the Constitution and laws of Ukraine through the corresponding amendments to the Law of Ukraine “On Local Self-Governance in Ukraine”.	
10	There are cases illegal changes to local government ordinances.	Introduce the state registration of local government ordinances to be performed by law agencies through making corresponding amendments to the Law of Ukraine “On Local Self-Governance in Ukraine”.	
11	The possibility for executive committee staff to combine their position with the position of a member of the same council does not provide the necessary conditions for unbiased evaluation of executive committee performance by the council.	Introduce a prohibition to combine the work in local council executive agencies with the membership in the same council.	
12	Laws of Ukraine “On Local Self-Governance in Ukraine” and “On Service in Local Government Bodies” do not directly stipulate that deputy mayors are to be appointed for the term of authority of the executive committee. Therefore, in reality, there are conflicts associated with dismissal of such officials. Also, there are cases when a deputy mayor is not included in the membership of the executive committee and remains a member of the corresponding council.	Amend Article 51 of the Law of Ukraine “On Local Self-Governance in Ukraine” with Paragraph Two with the following wording: “A deputy (deputies) of a village, town, city head, chairman of a city rayon council, chief of staff (secretary) of the executive committee is to be appointed for the position by a corresponding council in the way stipulated by the law for the term of authority of the executive committee of the council. Council members may not serve as a deputy (deputies) of the village, town, city head, chief of staff (secretary) of the corresponding executive committee”.	

#	Problem Issue	Ways to Resolve It	Notes
13	Part 7 of Article 51 of the Law of Ukraine “On Local Self-Governance in Ukraine” extends the limitation for the city head to serve as a member of any council (Part Four of Article 12 of the Law of Ukraine “On Local Self-Governance in Ukraine”) on deputy (deputies) of eth village, town, city mayor and chief of staff (secretary) of the executive committee. It is advisable to exclude this provision, because it works for a city mayor who has a representative warrant, whereas it is not quite logical with regard to his deputies (except for the position as members of the corresponding councils).	Eliminate the prohibition for deputy village, town and city head and chief of staff (secretary) of executive committees to serve as members of other councils and make the corresponding amendments to Article 51 of the Law of Ukraine “On Local Self-Governance in Ukraine”.	
14	The role and purpose of territorial community charters have not been specified.	Specify in the Law of Ukraine “On Local Self-Governance in Ukraine” the provisions dealing with territorial community charters; develop a model territorial community charter.	
15	The issue of holding local referendums has not been properly regulated – the current Law “On Ukraine-Wide and Local Referendums” is outdated and difficult to apply.	Pass the Law “On Local Referendums” in the appropriate wording.	The corresponding draft law has been prepared by the Ministry of Justice in 2009 and is under consideration in the Verkhovna Rada of Ukraine.
16	Local governments do not have the right for discretionary ruling on any issue, which has not been excluded from their competence and the authority to resolve it has not been delegated to any other body, although having such a right is envisioned by Part Two of Article 4 of the European Charter of Local Self-Governance.	Bring the Constitution of Ukraine (Article 19) and the Law of Ukraine “On Local Self-Governance in Ukraine” in conformity with the provisions of the European Charter.	

#	Problem Issue	Ways to Resolve It	Notes
17	The right for a territorial community to resolve issues of local importance directly or through local government bodies established by the community, which is specified by the Constitution of Ukraine, erodes the responsibility of local government bodies for implementation of their authority.	Amend Articles 140, 142, and 143 of the Constitution of Ukraine to specify local government bodies as the only subject of local self-governance.	
18	The principle of a voluntary consolidation of territorial communities specified by the Constitution of Ukraine brings the improvement of the administrative and territorial arrangement of the country in dependence of a personal advantage or disadvantage of certain groups of officials who enjoy local popularity.	Receive the interpretation from the Constitutional Court of Ukraine that the principle of voluntary consolidation of territorial communities does not apply to cases of administrative and territorial reform in the country in general.	
19	Absence of executive bodies in rayon and oblast councils.	Make the corresponding amendments to the Constitution of Ukraine to enable rayon and oblast councils to set up their own executive bodies and to make the corresponding changes the nature of local state administrations.	
20	The peculiarities of local self-governance in Sevastopol have not been identified because the law on the city of Sevastopol has not been passed.	Prepare and pass the law on the city of Sevastopol.	There are already a number of such draft laws.
21	A widely used practice of local governments to establish their own distinctions (honorary status, diplomas, acknowledgements, etc.). However, this authority of local governments has not been envisioned by the Law of Ukraine “On Local Self-Governance in Ukraine” and has not been regulated in the legislation.	Make the corresponding amendments (additions) to the Law of Ukraine “On Local Self-Governance in Ukraine”.	
22	As required by Part 3 of Article 15 of the Law “On Access to Public Information”, draft local government ordinances are to be made public not later than 20 working days before the date they are approved.	Exclude from the list of documents for mandatory publishing draft ordinance of individual nature (of non-regulatory nature) or make the timeframe shorter for making them public.	

#	Problem Issue	Ways to Resolve It	Notes
23	In accordance with Part 2 of Article 19 of the Law “On Access to Public Information” the requestor of the information has the right to address the manager of information with the request for information regardless whether this information concerns him/her personally or not without the justification of such request.	To avoid the destabilization of local government activities it has been suggested to envision the information request only with legally justified grounds.	
24	According to Article 20 of the Law “On Access to Public Information”, the manager of information should respond to the request not later than 5 working days, or, on some issues, not later than 48 hours after the request. In some cases the manager may prolong the term of the request to 20 working days.	Given the technical capacity of executive agencies of local governments it has been suggested to increase the time for giving response to the information request by analogy with the Law of Ukraine “On Inquiries of Citizens”.	
25	According to Part 5 of Article 6 of the Law “On Access to Public Information” there may not be limitations on access to information about the management of budget funds, ownership, use or administration of public property including surnames, names and patronymic names of legal persons who received these funds or property. However, according to the Law “On the Protection of Personal Data”, the data about the physical person are considered personal data. According to Part 2 of Article 5, Article 10 of the same law, such data are considered to be the limited access information. This information can be used only upon the consent of the subject of the information.	It has been suggested to coordinate the provisions of the Law “On Access to Public Information” with other requirements of the current legislation, namely, the Law of Ukraine “On the Protection of Personal Data”.	
26	Taking into consideration the substantial increase of the court fee after the approval of the Law of Ukraine “On the Court Fee”, paying such a fee represents a considerable expenditure item for local budgets.	It has been suggested to exempt local governments from paying the court fee for filing suits in the interests of territorial communities.	

IV. Target Audience

I. Entities involved in legislation drafting in the area of local self-government, members of parliament and subjects of the legislative initiative including:

1. Staff of the Secretariat of the Verkhovna Rada of Ukraine State Building and Local Self-Government Committee, and other Verkhovna Rada of Ukraine committees.

2. National Deputies of Ukraine.

3. Employees of the corresponding structural departments of the Administration of the President of Ukraine and Secretariat of the Cabinet of Ministers of Ukraine.

4. Members and staff of consultative and advisory agencies at the Office of the President of Ukraine, Prime Minister of Ukraine and Chairman of the Verkhovna Rada of Ukraine.

5. Staff of the Ministry of Justice, Ministry of Regional Development, Construction, Housing and Public Utilities..

6. Other entities of legislation initiative and authors of draft laws.

II. Persons interested in local self-government development:

1. Local government officials.

2. Members of local councils.

3. Scientists.

4. Members and employees of non-governmental organizations engaged in local self-government development.

5. Journalists.

6. Interested citizens and foreigners.