

Ukraine

(Україна)



Capital: Kiev

Inhabitants: 46.372.700 (2008)

Area: 603.628 km²

1. Introduction



Ukraine is an unitary decentralized state with mixed parliamentary-presidential form of government. Its territory is 603 700 sq. km. Population is about 48 mln. (approximately 33 mln. are urban and 15 mln. are rural citizens). Ethnic composition: Ukranian (more than 77 %), Russian (nearly 22 %), Crimean Tatar, Byelorussian, Moldavian, Bulgarian, Hungarian, Polish, Jewish, Greek, German and so on. The capital of Ukraine is Kiev.

Chronologically the formation of the existing system of territorial organization of public government is associated with July 16, 1990, when Declaration of State Sovereignty of Ukraine was adopted rejecting the soviet system of public government and proclaiming the intention to introduce democratic principles of its organization. On December 7, 1990 the

Law "On Local Soviets of People's Deputies of Ukraine and Local Self-government" was enacted, which paved the way for the first stage of post-soviet development of local self-government in its so-called "soviet-municipal" model (1990 – 1992).

At the beginning of 1994 the Law "On Formation of Local State Organs and Self-government" was adopted with the aim to restore the former centralized soviet system: local soviets and their executive committees built at all territorial levels.

Positive democratic shifts appeared in 1995 – 1997 which permitted to stabilize the system of local self-government and to lead it out of a permanent political crisis. The signing of the Constitutional Compact between the Parliament (Verkhovna Rada) and the President "On General Principles of Organization and Functioning of State Government and Local Self-government in Ukraine for the Period Preceding the Adoption of the Constitution of Ukraine" (June 8, 1995), the adoption of the Constitution of Ukraine (June 28, 1996), of the Law "On Local Self-government in Ukraine" (May 21, 1997) laid down the fundamentals of the present liberal-democratic model of local self-government. Currently, on the agenda is the reform of the Constitution of Ukraine which will modify local self-government and administrative-territorial organization of



the state. It is also planned to adopt a number of acts devoted to local self-government in communities (gromada), in provinces (oblasts) and regions (rayons), to changes in administrative-territorial organization and so on.

Modern constitutional concept of local power in Ukraine has a dual character and is based primarily on liberal-democratic principles of the so-called settlement model (natural law) of local self-government at the levels of villages, settlements, cities and towns. This model is based on the principles of decentralization of public power and foremost significance of territorial communities (gromada), where organs and officials with self-governing legal nature function in the interests of local population. This model does not provide for the existence of state agents or state administrations in local communities. At the same time in regions and districts a mixed model exists, combining local state government and local self-government: regional and district councils function as organs of local self-government, meanwhile regional and district state administrations act as organs of local state executive power (at these levels other state organs exist, for instance territorial organs of appropriate ministries). State administrations exercise both functions of state management and functions of executive organs of respective regional and district councils, which delegate them appropriate powers, as provided by law. Such symbiosis of municipal and state structures actually leads to extinction of local self-government and its transformation into state structure. It would be appropriate to note, that the draft law on amendments to the Constitution provides for liquidation of district state administrations and establishment of full value local self-government on regional and district levels by vesting appropriate councils with the

power to establish their own executive committees.

2. Territorial organization.

Modern administrative - territorial organization of the state has three-tier structure: the higher level include Autonomous Republic of Crimea, regions and two cities Kiev and Sevastopol, which have a special status; the middle level embraces districts and cities of regional significance; lower level is comprised of inner city districts, towns, settlements and villages.

Present legislation does not provide for the establishment of metropolitan areas which have special regime and which are so familiar to foreign municipal practice.

In the total, at the beginning of 2006 administrative-territorial organization of Ukraine included: Autonomous Republic of Crimea which has the status of administrative-territorial autonomy, 24 regions, 490 districts, 176 district cities, 2 cities of national significance (Kiev and Sevastopol), 279 cities of district subordination, 884 urban settlements and 28 573 villages.

Distribution of population between different administrative-territorial units is characterized by deep disproportion caused by various factors: economic, social-cultural, geographic, historic, political etc. So, in the most populous Donetsk province reside more than 4,8 mln. people, meanwhile in Chernivtsi province reside 0,9 mln. people. Even more sharp disproportion exists at lower levels.

There are no doubts that administrative-territorial organization of Ukraine is archaic. It has not been changed after the adoption of the Constitution. Inherited from the soviet period it led to confusion



and non logical territorial division between different units; some of them exist only de-facto, they are even not mentioned in the present Constitution (for instance, urban settlements, rural councils). Since independence many attempts to change it have been launched. The most radical reforms were proposed by several regions, which demanded more autonomy and even federalization of Ukraine. But the state has been consistently defending an unitary principle of its organization. In 2005 the state has launched a step by step reform of its territorial structure providing for reinforcement of communities and consolidation of districts. Reforms are still in the process of conceptual substantiation and elaboration of draft laws.

3. Institutions of local self-government

3.1. Local political systems.

The formation of a democratic state triggered vivid establishment and activities of political parties, public associations and movements. Their role increased both on regional and local levels. For a long time a majority electoral system was used for election of local self-government bodies. In 2004 the Law "On Elections of Deputies of the Parliament of the Autonomous Republic of Crimea, Local Councils and Heads of Settlements, Villages and Cities" was adopted. It provided that the majority electoral system shall be used in elections of settlement and village councils and heads of settlements, villages and cities, meanwhile in other cases the proportional electoral system shall be introduced.

Despite negative evaluation of the aforesaid scheme of local elections by municipal and expert communities, the Law entered into force in October 2005. The first elections were held in March 2006. These elections showed active participation of political parties. Some political forces

were more active at the regional, than at the national level. On the whole, the reform increased the role of political parties in local policy.

Legislation does not provide for the establishment of local parties (regional or at district level). Nevertheless in Kiev elections participated such public associations as "European Capital", "Public Potential of Kiev City" and so on.

The absence of political parties clearly and conceptually oriented at local issues, supporting the priority of local self-government (though all parties proclaim in their programs such goals) resulted in excessive politization of local self-government, artificial transfer to local level of debates on regional, linguistic and foreign policy and in inter-party conflicts, which still continue in our days.

Evaluating local elections of 2006 from the viewpoint of pluralism, transparency, correspondence to social expectations, it would be appropriate to note, that more than 50 parties and political blocks participated in these elections representing interests of actually all groups of population. Despite relatively high electoral activity of population, its attitude towards local policy and local politicians is shaped under influence of "big policy" and does not differ from their attitude towards national policy and all-nation political figures. regional and district councils actually represent the same political forces, which were preferred by citizens of respective regions at national elections.

Local executive bodies at the level of villages, settlements and towns are established as executive bodies of local councils. Such bodies are formed by local councils upon proposal of heads of respective villages, settlements and towns. At the level of regions and districts, in Kiev and Sevastopol local state administrations



are formed. They are vested with executive powers, excluded from the system of local self-government and act as agents of the state at the respective local level. Heads of state administrations are appointed and removed from their posts by the President of the Republic upon presentation of the Cabinet of Ministers of Ukraine.

One of the most difficult problems which has been posed before all post-soviet states, including Ukraine, is the restoration of democratic traditions which had been interrupted by decades of the rule of communist regime. Still the most acute problem is the development of genuine, not symbolic, local democracy as the basis for broad and conscious participation of citizens in public affairs.

There are the following main forms of direct participation: local elections, referendums, general meetings of citizens at the place of their residence, direct rule-making initiatives, public hearings, recall of deputies and elected officials of local self-government, individual and collective petitions, public expertise, public works improving amenities of respective territories and services provided to socially unprotected groups of population, participation of citizens in the work of local self-government bodies, public debates on draft normative acts of organs of local self-government, self-taxation and so on. Normative regulation of these forms of participation is provided by the Constitution, laws and charters of territorial units.

The legislation on local referendum procedure is archaic in character, complicated and confuse, it does not fully correspond to the requirements of the Constitution, thus making referendums less efficient and regular and their results disputable. At the same time other forms of participation are widely used, sometimes in combination with each other. For

instance, local officials report during public debates, citizens evaluate them and make their own proposals and so on. In a number of cities regular budgetary hearings are held (Berdiansk, Ivano-Frankivsk, Lviv and others). A valuable experience in public hearings on different issues was accumulated by such cities, as Severodonetsk, Khmelnytsky, Alchevsk etc.

The Constitution of Ukraine stipulates other democratic forms of public representation and participation in local affairs at the sub-municipal level. Upon initiative of citizens and with consent of local councils, committees of tenements, streets, city quarters may be established. The legal status of such bodies is regulated in detail by the Law "On Organs of Self-organization of Population" (2001). While acknowledging great significance of different forms of self-organization, it is necessary to note different level of activity of population, which may be explained by complicated and confusing procedure and by local political, economic and other peculiarities. For instance, in Fastov with population totaling 50 000 citizens, there are about 200 voluntary organization bodies which efficiently deal with local matters. At the same time in the capital of Ukraine, in Kiev, with population exceeding 2,66 mln. only 80 such bodies were established.

Direct participation of citizens in local affairs, supervision over activities of local self-government bodies is impossible without free access to information. Information in the system of local self-government may be provided by broadcasting sessions of local councils, publication of decisions of municipal bodies in local press and official heralds (including their Internet versions), creation and development of web-sites and other information nets and resources of local self-government bodies, establishment of



analytical centers, bodies of municipal statistics and so on. For instance, the sessions of the regional council of Lugansk have been broadcasted for a long time on monitors installed at the central square of the city. Many cities have their own web-cites but the information provided by them is rarely modified. This problem was discussed as the main subject of debates at the forum "Ukrainian Cities in Internet" (2004).

3.2 Staff of local self-government

The constitutional basis for organization of public service is based on strict separation of state and municipal services. Municipal service is regulated by a special law. It is necessary to note, that the level of professional knowledge in the sphere of municipal management and marketing, the quality of the work of executive bodies is low. Despite significant changes which have taken place after the presidential elections of 2004, still nepotism and corruption are widespread. Sociological studies held in one of the regions show that 60 % of respondents at least once in a year come across facts of corruption (for 15,69 % of these respondents such facts were numerous and for 28,55% more than once). About 27 % of respondents think that society has no forces to oppose corruption and only 4,5 % of respondents combine the prospects of anti-corruption struggle with democratization of power. The information provided by the Ministry of Internal Affairs shows, that during only 9 months of 2005 criminal proceedings on such grounds as corruption and malfeasance have been instituted against 18 former heads and 21 deputy heads of regional administrations, 15 former heads of regional councils, 72 present and former heads of district state administrations, 60 heads of cities and towns.

One of the ways for preventing corruption in local self-government bodies is the

administrative reform. It was initiated in 1997 but it is still unrealized. The presidential elections of 2004 and events of Orange revolution resulted in insignificant changes in the sphere of state and local management, though reformist initiatives were revived. In particular, several conceptual documents were elaborated aimed at reforming public administration, improving quality and efficiency of public services. In September 2005 the Code of Administrative Judicial Procedure entered into force which regulates the procedure for resolution of public law disputes between organs of state government and local self-government and disputes between such organs and citizens (the system of administrative courts).

4. Relations between central and local organs

4.1 General issues

Relations between central and local organs are based on principles of acknowledgment and guarantees of local self-government, its organizational, legal and economic independence, unity and integrity of the state territory, combination of centralization and decentralization in implementation of state power, balanced social-economic development of regions and districts and so on. The main legal notions used in the legal system for defining local self-government and its relations with the state are as follows: territorial community (gromada), representative bodies of local self-government, functions and powers of local self-government bodies, municipal service, delegated powers, voluntary organization bodies, communal property, judicial protection of the right to local self-government and so on.

In Ukraine there is no specialized organ of state power responsible for local self-government. Certain powers in the sphere of regional and local development are



vested in the Parliament which determines the main trends and principles of internal, including municipal, policy, in the President, the Cabinet of Ministers, in several ministries and in local bodies of executive power dealing with affairs of local self-government. These bodies have powers to adopt normative acts regulating local government. For instance, fundamentals of local self-government may be established only by laws. Appropriate consultative and advisory bodies are formed under central state organs. For instance, in 2005 under the President the National Committee on State Construction, Local Self-government and Regional Development was formed.

The main constitutional guarantees of local self-government are laid down by the Constitution. Constitutional norms may be divided into those which: 1) acknowledge local self-government; 2) determine its destination and powers; 3) lay down the system and regulate its activities; 4) establish economic basis; 5) specify territorial limits of functioning; 6) guarantee rights of citizens to local self-government and prohibit their infringement; 7) provide for judicial protection of the rights to local self-government.

4.2. Control over local self-government.

The state control over activities of organs and officials of local self-government may be exercised only on the basis of, within powers and in the procedure, as provided by the Constitution and laws of Ukraine; it may not lead to interference of state authorities into implementation by local self-government bodies of their own powers. General control over legality is exercised by prosecutor's office. The powers of general control are also vested in standing committees of the Parliament and, in case of delegated powers, in local state administrations. Financial control is

exercised by Chamber of Accounts of Ukraine, the Ministry of Finances, State Controlling and Revision Service, Fund of State Property and some other state bodies. Branch financial control is exercised by controlling departments of respective ministries and other central state organs. Restriction of the rights of local self-government may take place only during the state of war or emergency. Decisions of local self-government bodies contravening Constitution and laws of Ukraine are suspended in the procedure, as provided by law, from the moment appropriate complaints are filed in courts.

4.3. Protection of the right to local self-government

The main mechanism for judicial protection of local self-government are administrative courts functioning on the basis of the Code of Administrative Judicial Procedure of 2005. The first step in formation of the system of administrative justice was not efficient. Actually only one court – the Higher Administrative Court – was established. The functions of local administrative courts, prior to their formation, are fulfilled by courts of general jurisdiction which act on the basis of administrative procedural norms. Cases involving local self-government are also in the province of economic courts. Significant role is played by the Constitutional Court which has enacted more than 40 decisions dealing with local self-government matters.

Among national institutions representing local interests before central government there are the Foundation for Promotion of Local Self-government under the President of Ukraine, the Congress of Local and Regional Governance, which with the aim to protect general interests of local self-government unites as a confederation three national associations of local self-government - Association of Rural,



Settlement and Town Councils of Ukraine, Association of Ukrainian Cities and Communities, Ukrainian Association of Local and Regional Powers. There are several regional associations of local self-government in Ukraine.

5. Functions of organs of local self-government

The analysis of the national model of local self-government shows that Ukraine has chosen the model of direct regulation of local affairs, functions and powers of local bodies and officials according to the scheme: "permitted only what is stipulated by law". Local self-government is exercised in the frames as provided by the Constitution and laws. The Law "On Local Self-government in Ukraine" presents a peculiar list of functions and powers of organs and officials of local self-government. Powers of local self-government are also laid down by hundreds other branch laws (on education, public health care, social care and so on). There are about 700 laws, which regulate different relations in the sphere of local self-government.

Since the beginning of 1990 and until our days legislation has been only declaring the existence of local policy. This, from our point of view, did not permit to implement the constitutional liberal-democratic concept of local self-government. For a long time matters of local policy have been represented exclusively in the form of functions and powers of organs and officials of local self-government, in other words indirectly. These functions and powers are defined in a traditional way; the emphasis is not on local matters, public local services, on interests of communities and inhabitants, as required by the Constitution, but on some powers of organs and officials of local self-government.

The powers of local self-government bodies are divided into exclusive (realized by local councils exclusively at their plenary sessions), own and delegated. Legislation does not provide for clear division of mandatory and facultative powers.

The most contradictory is the sphere of the so-called "transferred" and "delegated" powers. According to expert estimations, the volume of delegated (transferred) powers is much bigger, than the volume of own powers of organs of local self-government. About 70 to 90 % of delegated powers are not supported by necessary financial means; some of these powers are not inherent to local self-government.

The other problem: legislation did not manage to define properly functions and powers of local self-government and local state executive bodies. This results in competition of different levels and kinds of public power and even in subordination of local self-government to local state bodies. It is a typical situation when regional state bodies instruct or control local self-government bodies. The situation is deteriorated especially when appropriate services are financed by budgets of different levels. For instance, local self-government bodies are responsible for such public services, as education and medical care, but these services are completely or partly financed by state bodies (central, regional or at district level).

Local self-government bodies do not have sufficient means for execution of powers that have to be financed out of their own revenues (maintenance of roads, management of communal property, social aid and so on). And at the same time they get about 90% of their revenues from administrative inter-budgetary transfers (assigned tax revenues adjusted by withdrawals for better off local budgets or



supplemented by equalization grants for the others, additional grants and subsidies) for the financing of functions taken in account in the equalization through interbudgetary transfers. In 2002, health services, education and social protection represented more than 81% of the entire local public expenditure.

A balanced approach to separation of powers between different levels of government was observed in such spheres, as planning, water supply and social services. For instance, the Law "On Social Services" (2003) divides state and communal sectors of social services financed by their respective budgets.

At the same time the sphere of education provides another example of amorphous separation of powers between different kinds of local power. The same situation exists in the spheres of health care, electricity and energy supplies.

Basically, decentralized functions include management of communal property, development planning of the territory, organizational powers (for instance the structure of executive bodies, quantity of their staff and so on). Centralized functions are aimed at such spheres, as defence.

On the whole, it is possible to speak about dispersion of power at local level, when among numerous bodies participating in local affairs there are no openly dominating center concentrating administrative functions.

6. Local finances

Local self-government bodies are independent subjects of financial management. They independently elaborate, approve and implement local budgets. Independence of local budgets is guaranteed by acknowledgement of their

own revenues, by transfer of shares of state revenues in the proportions as stipulated by law and by the right to define independently the use of means of local budgets in accordance with law.

Local self-government bodies may establish local taxes and duties in accordance with law and own revenue sources. On the decision of meetings of citizens held at the place of their residence local charges may be introduced on the principle of voluntary self-taxation.

As witnessed by statistics, the share of expenditures and revenues of local budgets in GDP comprises accordingly 11 % and 9 %. These figures have been constantly decreasing. So, the share of local budgets in GDP in 1993 totaled 16 %, in 1998 – 12,9 %, in 2003 – 8,5 %. According to expert estimations, the share of revenues of local budgets in GDP exceeds average level of post-soviet countries, though the absence of well developed institutions and instruments of financial provision of local self-government restrains the development of local self-government.

Speaking about the structure of revenues in budgets of local self-government, it would be appropriate to show the following average figures for the last ten years: the share of capital revenues without accounting grants is 0,2 %, non-tax revenues – 11,8 %, revenues derived from entrepreneurial activities and municipal property – 5,1 %, property tax – 0 %. Currently, the biggest share of revenues of local budgets are inter-budgetary transfers. Local taxes and payments in 2005 comprised 2,4 % of total revenues of local budgets.

Dr. Alexander Batanov

Institute of State and Law of the National Academy of Sciences of Ukraine