Local and regional reform in the Ukraine

1. Current situation

According to Art.133 of Ukrainian Constitution the Ukraine is a unitary state and it has the following administrative-territorial units: the Autonomous Republic of Crimea, 24 oblast (regions) , raion (districts), raions in the cities, selzshe and selo (village). (See also table attached). There are three major administrative subdivisions: oblast (region), raion (district), and settlements: city, urban and rural settlements.

Regions, cities, districts are governed by a state administration, a chief of which is appointed by the president. Crimea has its own incomplete cabinet of ministers, however the state administration is represented by the office of the Presidential Representative of Ukraine. A basic and the lowest level of administrative division is a settlement that is governed by a local council (rada). Cities as a settlement always carry a special status within a region and have their own form of self-administration (municipality - vykonkom) and some may consist of their own city's districts (raions). City municipalities are governed by a mayor.

Types of settlements:

<table>
<thead>
<tr>
<th>Status / settlement type</th>
<th>Status (in Ukrainian)</th>
<th>Total Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>misto / city</td>
<td>місто</td>
<td>457</td>
</tr>
<tr>
<td>municipality</td>
<td>місто зі спеціальним статусом</td>
<td>2</td>
</tr>
<tr>
<td>misto oblastnoho znachennia (city of regional importance)</td>
<td>місто обласного значення</td>
<td>176</td>
</tr>
<tr>
<td>misto raionnoho znachennia (city of local importance)</td>
<td>місто районного значення</td>
<td>279</td>
</tr>
<tr>
<td>selyshche miskooho typu / town</td>
<td>селище міського типу</td>
<td>886</td>
</tr>
<tr>
<td>selo / village</td>
<td>сільський населений пункт</td>
<td>28,552</td>
</tr>
<tr>
<td>selysche / village</td>
<td>селище</td>
<td>1,364</td>
</tr>
<tr>
<td>selo / village</td>
<td>село</td>
<td>27,188</td>
</tr>
</tbody>
</table>

During the international municipal hearing "Development of governance at the local and regional level" the President of Ukraine Viktor Yanukovych said that the local governmental reform would be impossible as long as the Ukrainians will not overcome the complex of the Soviet past. The president spoke also about the need of explanatory work among the population. Until now a significant number of legislative initiatives aimed to improve the status of work in the field of local government and public service have been already developed.

Viktor Yanukovych stressed that people in the community must participate in the issues of government. It would also be necessary to carry out the explanatory work among the population, to increase training management and to use achievements of domestic and foreign experience.

In this regard, the President called for the implementation of pilot projects in the sphere of reform to the local government, first in such regions where citizens are ready to
participate in this work. Through the implementation of this reform Yanukovych sees the possibility of use of initiatives of local authorities in the future as well as the general modernization of the country.

This reform is intended to decentralize the power of authorities, improve the governance in the regions and eliminate the excess of power on different administrative levels.

2. Local and regional reform in the Ukraine, its development

Nowadays there are some contradictions in the modern governmental system of Ukraine. According to the European Charter of Local Self-Government, the bodies of local Self-Government make up the pillars of any democratic system." Ukraine is trying to precisely declare the same kind of system. Although Ukraine has ratified the Charter 13 years ago it does not really fulfill its norms as well as those of other international obligations.

Incidentally, the law 2222-42, which was going to be the first phase of political reform in Ukraine or local and regional reform as well, (Law of Ukraine "On Amendments to the Constitution of Ukraine" dated with December 8, 2004 № 2222-IV) was recently declared by the Constitutional Court of Ukraine as not corresponding to Ukrainian Constitution. Its important here to mention that this law became the legal empowerment of the political reform in 2004 - a compromise (or, more precisely, the assignment), after which Yushchenko's opponents put up with his unconstitutional presidency.

The empowerment of local government (in reality, bringing the local government system into consideration with the European Charter) was foreseen as the second phase of political reform. However for the last six years not a single significant step in this direction was completed. Moreover, this autumn the first phase of local and regional reform was canceled - the Constitutional Court declared the law the law 2222-4 to be not in compliance with the Basic Law of Ukraine. That is why the fate of local government reform has become even more vague: if there is no political reform of 2004 - there is no political commitment to implement the second phase of it.

In the Ukraine, there is no clear distinction in the public mind between local and regional self-government. Moreover, the latter notion just does not exist de jure in the country, however, this does not eliminate the problem of organisation of regional self-government.

According to the Art. 140, Part 1, of the Constitution of the Ukraine, "local governance it is a right of regional communities to decide about local issues within the framework of the Constitution and laws of Ukraine."

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1 Roman Travin, 'K woprosu o mestnom i regionalnom samouprawlenii v Ukraine', Press Post 30.01.12
2 Due to political reform 2004 the peaceful transfer of power from the acting President Leonid Kuchma to the opposition leader Viktor Yushchenko was possible. On December 8, 2004, in the midst of the "orange revolution" Verkhovna Rada adopted the Law 2222-4, which abruptly changed the country's constitution. According to this law, the president would lose the right to appoint and dismiss the ministers, heads of regional and district administrations, and what is the most important: the president had the right independently nominate the prime minister and dismiss him. The reform sharply increased the role of Parliament: the appointment and dismissal of ministers have become the prerogative of the parliamentary majority. (http://news.made.ru/politics/news317728.html)
Local governance is carried out by the local communities directly or through the bodies of regional government - rural, village, town councils and their executive bodies (Part 3, Art. 140 of the Constitution). At the same time paragraph 4 of the same article describes the district and regional councils as local authorities, which represent the interests of local communities. This means that the Constitution of Ukraine actually recognizes the differentiation of governmental levels; however, Art. 5 of the Basic Law of Ukraine "On local self-government" directly relates regional and district councils to the local government system.

This does not correspond to reality. Political power on the district level has some of the features of the regional, but if there is any tension, in this case it would be more precise to speak about the oblast power as a regional power, which controls the local government, takes decisions about a number of regional programs, etc., however, as it was mentioned above, de jure it is not the regional authority as it is.

It is worth noting that the most acute problems and contradictions that exist today between local authorities and the center are concentrated at the regional level. First of all it is mainly a relationship between regional and district administrations and their councils. According to Art. 44 of the Law "On Local Self-Government", district and regional councils delegate some power to regional administrations. Thus, according to the Article 118 part 6 of the Constitution of Ukraine, local state administration "is accountable and under the control of councils in terms of delegation of powers to them by the appropriate district or oblast councils."

In fact, this "delegation" is mandatory, while the real control of the regional and district councils is almost impossible, because they can not directly affect personnel decisions in administrations.

The Administration is always formed, and then managed by the designated from Kiev officials and this often ends up with a sharp antagonism between them and the councils.

In the Ukraine, no matter which political team is ruling, there is a sustained commitment of central government to reduce the importance of government on the regional level. The position of regional elites often ignored or it meets resistance from the center. As heads of administration in a number of cases are often assigned so called "vikings" or unpopular local politicians, what can even irritate the majority of the population of the region. Such a system in any country would be ineffective and full of conflicts.

However, it is clear that there is a need to discuss a future system of governance, which would contain not even two, but three levels: central, regional and local with clearly defined limits of authority between all three levels.

3. Problems and future development of the reform

Local governance is one of the most effective and really democratic forms of territorial development. It is the possibility for local people to solve their local problems independently, within the framework of national legislation and state policy. Such policy is the basis for regional development and prosperity.
Real and effective local self-government, autonomy of local government in decision-making process is an indicator of local democracy’s level in any country.

Local government is one of the most important elements of democratic system in any country. The development of any country depends on the development of its local communities. Only democratic governance on local level can provide qualitative services for citizens and the quality of life in general.

Implementation of basic principles of local autonomy in Ukraine.

In Ukraine, a system of local self-government is quite successful. The bodies of local self-government cooperate closely and effectively in most cases with the local population. Such form of cooperation between the authorities with the public, as public hearings, is clearly defined in national legislation and is quite successful. At the same time, the country has a number of problems on the road to full self-government of regional communities. Here are some of them:

In the Ukraine, the right of local communities to solve local problems independently is guaranteed by the Constitution of Ukraine. This law has been defined and fixed, as local government (Article 140).

Theoretically, according to the European Charter of Local Self-Government the Constitution of Ukraine recognizes the organizational, financial power and legal autonomy of local governments, but in reality, these principles are not always fulfilled.

The principle of independence and autonomy of local communities as defined by the Constitution, unfortunately, in practice, not always fulfilled. Mechanisms of achieving independence and autonomy for local governments, especially in decision-making process are not precisely defined. The concept of "local matters" (Article 140 of the Constitution), requires a more precise definition. The Constitution of Ukraine does not specifically explain what issues are "issues of regional importance."

Here are the main laws that govern the implementation of local self-government in the country: the Laws of Ukraine "On Local Self-Government in Ukraine" (5/21/1997), "On bodies of population self-government" (07.11.2001) and "On Local State Administrations" (04/09/1999). The Law of Ukraine "On Local Self-Government in Ukraine" (1997) defines the basic principles of local self-government, but at the same time, it does not determine how to achieve and ensure the real independence of local communities.

Ukraine is in the difficult process of reforming the public administration and local self-government. Major issues, which require both regulatory and methodological support, are as follows:

1. Democratic system of regional self-government, which is directly representing the interests of local communities on intermediate level between local and state, does not function effectively. Mechanisms of representation of local communities on this level still need constitutional recognition.
2. In the Ukraine there is a problem of clearly defined and distributed roles and responsibilities between local government and local executive bodies and it still remains unsolved. The principle of subsidiarity of authorities is not operating as it should be.

3. Adopted Budget Code of Ukraine permitted local governments to conduct a more independent fiscal policy however this did not solve all the local financial problems, including the lack of establishment of full rights for local governments to be financial independent.

4. In the Ukraine the right of local communities to solve local problems independently guaranteed by the Constitution. At the same time the rights of local institutions, specific tools and mechanisms for its implementation are not clearly defined, which leads to a formal approach and inability to implement these provisions on practice.

According to N. Pukchtinskij there are also some economic problems in the sphere of local and regional reform in Ukraine:

- Lack of financial resources for the development of local communities;
- Ineffective inter-governmental financial relations;
- Lack of orientation of public policies towards development of regions;
- Lack of clear distinction between communal and state property;
- Inefficient tax base of local budgets.

At the moment the reform of local government in Ukraine requires not only the financial support and has not only economic components and related to this economic problems. Successful reform requires not only financial resources; more political will and the corresponding legislative changes are also required.

All of the major problems of the state of local self-government in Ukraine appeared because of a lack of proper legislation. In fact, almost every year different working groups are organised. These prepare a variety of suggestions, concepts and draft laws, but all these developments unfortunately remain only projects. The Supreme Council of Ukraine is still to consider several revisions of the draft laws, which are necessary for the further development and strengthening of local government, but the final decision of the issues are not adopted.

In 2001 the Council of Europe did extensive work to study the situation in the Ukraine. As a result the following recommendations were developed: 102(2001) "On the local and regional democracy in Ukraine". The main part of it is devoted to problems and ways of approaching and to ensure the full development of local and regional governance as the main element of democracy.

The main suggestions and recommendations of the Council of Europe were related to:

- The need for administrative-territorial reform in the country and the development of regional self-government;
- The need to distinguish the scope and authority between local authorities and local public administrations;
The need to supply all the local authorities with all necessary resources, needed to carry out their duties appropriately;

The need of improvement of legal protection of local government, etc.

Implementation of the Recommendations of the Council of Europe is very important for any country, as it can significantly improve local and regional democracy.

Unfortunately, in the Ukraine many of these said Recommendations items have as yet not been implemented. The Municipal Code (the adoption of which was one of the recommendations), which has not been adopted yet, should unite all existing laws relating to local government, and thus help to avoid existing regulatory controversy.

Democratic system of regional autonomy, which is directly representing the interests of communities on intermediate level between local and state does not function effectively.

Local authorities do have certain power and certain independence, but it is still too early to talk about their full and effective local self-government.

Despite the existence of the above-mentioned problems in the Ukraine, there are also positive examples of effective implementation of the rights of citizens as for the local self-government. The activities of local authorities have become much more transparent and accessible to the public than a few years ago. But truly efficient functioning of local government and local administrations will only be possible only after introducing relevant amendments into the two above-mentioned laws. It is also necessary to adopt a number of regulations, which would regulate such issues as communal ownership and regional government.

The local authorities in Ukraine to this date do not have sufficient instruments for effective governance and the management of regions. In this regard, it is necessary to implement special measures to ensure the improvement of good local governance in the country. Today it is extremely important to give more independence to local authorities and to define their roles and control mechanisms more precise. The result of the reform process should be broader autonomy for the local government. Local state administrations in their turn should provide more strictly control and monitoring functions concerning the implementation of national legislation by local authorities.

Natalya Steinbrunner
Eastern Partnership and Russia Unit
01.02.2012