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## **Local Administration Reform**

### Experience from Germany and Ukraine

by Dr. Georg Milbradt

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## About the German Economic Team

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The German Economic Team (GET) advises the governments of Ukraine, Belarus, Moldova, Georgia and Uzbekistan regarding the design of economic policy reform processes and a sustainable development of the economic framework. As part of the project we also work in other countries on selected topics.

In a continuous dialogue with high-level decision makers of the project countries, we identify current problems in economic policy and then provide concrete policy recommendations based on independent analysis.

In addition, GET supports German institutions in the political, administrative and business sectors with its know-how and detailed knowledge of the region's economies.

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## About the author

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## 1 General remarks

After the end of communism and the dissolution of the Soviet Union, the former communist countries in Europe and especially the soviet successor states inherited structures and mindsets, which are not so easy to overcome. They suffered in particular from

- An over-centralized governance system,
- An extreme fragmentation of the local level,
- Overlapping of competences,
- An over-regulated and under-governed state,
- And an inefficient centrally planned economy.

Against this backdrop, public sector decentralization and the introduction of viable and capable local self-governments (LSG) became one of the most important reforms in East Germany (former German Democratic Republic, GDR) and especially in those former communist countries which wanted to join the European Union. With the exception of Belarus all ex-communist countries signed and ratified the European Charter of Local Self-Government (ECLSG)<sup>1</sup> in the 1990s and committed themselves to introduce and guarantee LSG according to the detailed articles of the Charter. The content should preferably be incorporated in the constitution or at least in ordinary laws.

## 2 Case of East Germany

### 2.1 Re-founded states and municipalities

Shortly before reunification, the GDR passed the act on Local Self-Government of municipalities (*Gemeinden*) and districts (*Landkreise*) and conducted new elections of local and district councils, but was not able to comprehensively reorganize and reform the local and the district level. After reunification the re-founded states (*Länder*) in the East became responsible for this task according to the German federal constitution (*Grundgesetz*). The main problem of implementing real local autonomy was the extreme fragmentation at the local level, the lack of competent personnel, reform of funding, and legal problems concerning competencies and property. The new state parliaments and the new state administrations addressed could solve those problems step by step in the following years. It was very helpful for the transformation process that powerful local autonomy had existed before communist and Nazi rule and that different functioning LSG systems (in the West German

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<sup>1</sup>The main arguments and conclusions are enshrined in the Charter's preamble:

- Local authorities are one of the main foundations of any democratic regime.
- The right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe.
- At local level this right can be most directly exercised.
- The existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen.
- Safeguarding and reinforcement of local self-government is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power.
- This entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment.

states) existed which could serve as models. West German municipalities and states supported their eastern partners and sent many legal and administrative experts.

## 2.2 Funding

One of the first tasks of the East German states was to erect a new funding system for their respective municipalities and districts. During GDR times local authorities were part of the central budget. The money was ear-marked and transferred from the centre to the regions (*Bezirke*) and then through the districts to the municipalities. Bigger cities (*kreisfreie Städte*) were outside the district organization and got their funds directly from the regions. The local level had no autonomy over local taxes, which in general were not very important.

According to the tax distribution laid down in the federal constitution, the municipalities in the East (like their counterparts in the West) got income and tax rate autonomy of land taxes, business tax, local fees and duties, a 15 % share of the Personal Income Tax and a minor share of the Value Added Tax. The states organized a general transfer and equalization system (which is still in place) to fill up local budgets, thereby reducing the inter-municipal financial per capita differences, taking account of objective, needs-based criteria like the number of inhabitants and pupils. The differences between the municipalities are adjusted up to 75%. The distribution formula is fixed by state law. The general transfers are paid without conditions. Local authorities have spending autonomy in fulfilling their tasks. Additionally, municipalities and districts can apply for conditional grants, especially for co-financing important infrastructure investment (mostly between 50 and 80% of the necessary cost). These grants are allocated by decisions of the responsible state ministries according to published assistance guidelines.

The districts are funded by contributions of the municipalities (the rate is decided by the district council), unconditional transfers according to a formula fixed by state law as well as ear marked grants. The regions were abolished.

## 2.3 Guarantee of local self-government

The ECLSG was totally transposed into the state constitutions including the subsidiarity principle which should regulate the allocation of competences between different government levels. Sufficient financial resources are constitutionally guaranteed as well. If new tasks are transferred to the local level the state must compensate the additional expenditures. Municipalities are legal persons and can sue before the respective state constitutional court against state laws and regulations if they violate their constitutional rights. Against administrative acts (including supervision), municipalities can go to administrative courts. Districts have the same rights. Generally, the jurisprudence of the courts is friendly towards local authorities.

## 2.4 Internal organisation, training, and implementation

In principle, municipalities and districts have full administrative and organizational autonomy, only limited by special laws. By popular vote, councils are elected for 5 years, mayors and district heads (*Landrat*) for 7 years. Mayors and district heads chair the respective council, manage the administration and are legal representants of the municipality or district. They cannot be recalled except by a referendum in which more than 50 % of the registered voters agree to the recall. To avoid conflicts of interest, the law prohibits councillors, mayors and municipal employees to act, decide, vote on matters in which they, or their families, companies have a personal interest, advantages or disadvantages. Municipal employees are not eligible in council elections. The same applies for managers of companies which are owned or controlled by the municipality.

The salaries of state and municipal civil servants are equal and fixed by state law. The wages of other employees are determined by wage agreements with the trade unions. The wages of all levels of government do not differ much. Therefore, the local authorities are fully competitive on the labour market.

During the first years of transition, the states and the local authorities intensively retrained their old staff to improve knowledge especially in the field of law, administration, taxes and budget. Because of decentralization and new tasks, the personnel of municipalities and districts had to be increased whereas the number of employees on the federal and state level was considerably reduced. Strong local governments and decisive and responsible mayors were essential for the success economic reconstruction of the East.

## 2.5 Territorial and functional reforms

To achieve strong and capable LSG, which were able to fulfil the new tasks, to provide better services by professional personnel at affordable cost, all East German states had to overcome the territorial fragmentation of the GDR time. The communists were not interested in a powerful and self-confident local level. Therefore, they preferred the old Roman principle: divide and rule. Most units of the local level were too small and too weak for real self-government. During the GDR time the number of districts was increased and sometimes municipalities divided. Therefore, a territorial reorganisation was inevitable.

The states began by encouraging the municipalities to amalgamate voluntarily to bigger and stronger units, with a “carrot and stick” approach. Mergers were supported by special grants and a better permanent financial endowment (the carrot). The process was accompanied by state guidelines concerning the criteria of the aspired goal. In difficult cases, the states allowed forming administrative communities in which the original communities still exist with their councils and mayors, but have only merged their administration. However, the state governments showed the stick as well by setting a deadline for voluntary amalgamations after which the rest would be merged by law.

For example, Saxony with originally 5 million inhabitants inherited 1,623 municipalities from the GDR time. In the first years the number was reduced by 52%, another 14% by law, then 8% by further voluntary mergers especially of administrative communities. Today 419 municipalities exist, 181 of them have formed 71 administrative communities. Today 309 local administrations exist. In addition,

rural municipalities have founded special purpose associations under public law for joint executions of specialized or capital-intensive tasks. Because of demography (shrinking population) and technical progress (digitalization), around 200 local administrations seem more appropriate from today's perspective.

Similar processes took place in the other states.

In two steps the number of districts was reduced from 48 to 10, the number of district free cities (comparable to cities with oblast significance in the Soviet Union) diminished from 6 to 3, therefore the number of units of the upper local level went down from 54 to 13 which is still optimal from today's perspective.

The districts and district free cities are playing an important role on the local level because they are strong enough to execute many, specialized public functions: public health, public hospitals, nearly all secondary schools, public transport, waste management, public order except police, road construction and maintenance, licences, etc. Therefore, the territorial reform was accompanied by a functional reform transferring tasks and personnel from state agencies to the districts.

### **3 Ukraine**

#### **3.1 No decentralization before the Maidan Revolution**

The situation on the local level before the Maidan Revolution of 2014 had some similarities to the situation in East Germany in 1990. Although Ukraine had signed and ratified the ECLSG, they could not fulfil many duties of the obligation under the Charter. Due to changing governments and serious economic and political problems, Ukraine could not achieve the necessary reforms to introduce real local self-government, especially in the rural areas. The constitution, the laws regulating local administrations could neither enable the necessary degree of local autonomy nor protect the local level from permanent politicized interferences of the centre or state agencies. The territorial structure of the Soviet time was not changed. The local level stayed highly fragmented with many poor and incapable units. In the countryside, the rayon state administration played the most important role. The insufficient funding mainly by strictly conditioned subsidies allowed no financial autonomy.

Rayon and oblast councils lacked organizational autonomy which is one of the key elements of self-government. Rayon and oblast council decisions are executed by the respective state administration.

#### **3.2 New attempts**

On 1 April 2014, only 6 weeks after the successful Maidan revolution, the new Yatsenyuk government with Hroisman as Minister of Regional Development passed a comprehensive plan to reorganize and strengthen LSG ("Concept of local self-governance and territorial power reform in Ukraine").

The main goals were:

- Democratization, participation;
- Improved local public services, better governance, accountability;
- Economic development;

- Fight against corruption.

The process started with voluntary mergers of municipalities, but excluding cities of oblast significance until 2018. To incentivize the amalgamation process, the new founded Amalgamated Territorial Hromadas (ATHs) got special privileges:

- 60 % share of the Personal Income which originally were paid to the rayons, some excise taxes and more autonomy on local taxes and fees;
- Direct access to the central budget and additional funding;
- New competences which were transferred from the rayons;
- Fiscal equalization scheme.

The amalgamation process started in 2015 with nearly 10,961 local units on the territory controlled by Ukraine. Up to the end of 2019, 4,698 of them were voluntarily amalgamated into 1029 new ATHs leaving 6,263 units in the old structure. Now only 27.5% of the Ukrainians are living in the old local administration system, dominated by rayon state administrations, but 33.2 % in new ATHs including ATH cities with oblast significance. The rest is living in other cities of oblast significance. Interesting is the regional distribution of amalgamation. Lagging behind are Zakarpatska Oblast, Bessarabia in Odesa Oblast, Kyivs Oblast, Vinnytsia oblast. There is no west-east divide. Out of 465 rayons in the government-controlled area, in 26 rayons the whole territory of the rayon is organized in ATHs, sometimes all municipalities including the rayon capital have merged to one unit forming entities of some 10.000 inhabitants. In 164 rayons more than 50% of the territory is organized in ATHs and in 200 rayons less than 50%. However, in the remaining 75 rayons nothing has happened.

Nevertheless, the result of voluntary amalgamation and decentralization is impressive taking into account the many obstacles this reform had to overcome. Local services and governance have improved. Decentralization has become the most successful and most popular reform in Ukraine. However, the changes were at the expense of the rayons and especially the rayon state administrations. They lost money, competences and eventually jobs. Therefore, many rayon state administrations but also rayon councils were not happy with reform and tried to slow it down or even to prevent it. Some local oligarchs feared to lose control in the new hromadas, members of parliament were afraid of new demarcations of their constituencies with an unfavourable result in future election. Opposition came from the central and oblast state administration as well. Some governors openly sabotaged the reform.

As the following government under Hroisman lost the parliamentary majority it was unable to overcome the internal obstacles and pass the necessary legislation, especially a constitutional amendment to finish the territorial reform and to define and protect LSG. The government lacked the political power and the backing of the presidential administration to set a deadline for the voluntary amalgamation process and to equip the local level with the necessary competences and guarantees. The oblast councils did not pass all perspective plans for the intended mergers. These documents were necessary for the next step of compulsory amalgamations.

As the old rayons were the main losers of the reform, a political decision was necessary, whether to abolish the rayons or to create a new rayon structure with fewer and bigger units and maybe new roles. Should the enlarged and renamed rayons become part of local self-government with their own administrations alongside the state administrations or should they be transformed into a pure state institution? The problems were discussed, but a compromise with the other stakeholders or a final decision in parliament could not be reached.

Another unsolved problem concerned supervision. What kind of supervision? What shall be supervised? By whom? What kind of judicial protection against unlawful interventions or hidden recentralization?

Still on the agenda were other important issues as a revised law on LSG, an improved and LSG-friendly funding system (more unconditional grants), a law on local civil service, full planning authority over the whole municipal territory, amendments of the election code concerning local elections.

### 3.3 New possibilities

The situation changed with the election of the new president Zelensky, who achieved for the first time in Ukrainian history an absolute majority in parliament for his party Sluha Narodu. Now it seems possible to pass the most important part of necessary legislation and even a constitutional amendment with the help of other parliamentary factions before the 27th October 2020, the date for local elections, fixed by the constitution. In the meantime, parliament has authorized the government to decide all perspective plans themselves, to finish the amalgamation process and to redraw the Ukrainian map of the local level. At the moment the corona pandemic hinders the political processes and further necessary consultations. A new proposal for a constitutional amendment is expected in the next weeks, but the content is not yet known. The rayon question, the funding problem, revised laws on local government and on local state administration as well as other necessary changes, will be need to be addressed.