

EU CONDITIONALITY, CONSTITUTIONAL REFORM, AND POST-WAR SUBNATIONAL GOVERNANCE IN UKRAINE

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The paper “EU Conditionality, Constitutional Reform, and Post-War Subnational Governance in Ukraine” was written by Tony Levitas, Professor and a leading expert with over 30 years of experience in multi-level governance globally and in Eastern Europe.

The paper reflects the independent research and views of the author. The opinions expressed in this document are solely those of the author and do not necessarily reflect the official views of the Polaris Programme, the Government of Sweden, Sida, or SALAR International.

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ABOUT AUTHOR

In 1989, Tony Levitas went to Warsaw to write a PhD. Thesis on the relationship between the economics profession and the Polish United Worker's Party. In the middle of his research the Berlin Wall collapsed, and he was swept up in the revolution. He never finished his dissertation, but over the next thirty years, became a leading expert on intergovernmental fiscal relations. In Poland, he played an important role in the debates over privatization, in developing the legal framework for local government borrowing, guarantee funds, and utility pricing, and per most importantly in designing the per pupil formula that provides subnational governments with the funding they need to run their schools.

Between 2000 and 2002, he worked on education finance and the reform of the Budget Code in Lviv, before moving to Belgrade to work on local government reform in Serbia, Macedonia, and Bosnia-Herzegovina. In Serbia and Macedonia, he helped draft and implement framework legislation on the functions and finances of municipal governments. In Bosnia-Herzegovina he led a team which helped redesign the country's subnational finance systems before the implementation of a Value Added Tax eliminated their main source of revenue (shared sales tax). He has also worked on subnational finance and governance reform in Albania, Armenia, Georgia, Mongolia, and since the Maidan, in Ukraine, where he is known mostly for his work on the allocation of the Personal Income Tax.

He has taught at the Central European University (CEU), the Massachusetts Institute of Technology (MIT) and for the last thirteen years at Brown University. At Brown, he teaches courses on the history of the American Tax State, Education Policy, and State and Nation Building in Post-Communist Europe. Over the years, he has published widely on local government reform in post-communist Europe and has worked with the leading institutions and donors involved with the area, including USAID, GIZ, the World Bank, FCDO, Swissaid, the Soros Foundation, and SALAR International. He lives between Providence, Rhode Island and Warsaw Poland and speaks Polish, bad French, but alas not Ukrainian.



ABSTRACT

For the last 30 years, Ukrainian advocates of decentralization have assumed that a) Ukraine is best envisioned as a unitary state with multiple levels of local self-government, b) that territorial communities (hromada) are already local self-governments, and c) that most the important reform needed to complete the decentralization process lies in amending the 1996 Constitution so as to allow the democratically elected councils of oblasts and rayons to have their own executive organs. This paper traces the origins and evolution of these assumptions while taking issue with all of them.

It argues instead that the way the Constitution divides governmental powers and public sector property rights between democratically elected councils and executive bodies at all levels of territorial administration makes it legally unclear whether in fact hromada are 'local self-governments.'

Equally importantly, it argues that the constitutional reforms necessary to clarify whether oblast or rayon governments are territorial arms of the national state or local self-governments extend well beyond simply endowing their councils with their own executive organs. Finally, and perhaps most importantly, the paper argues that given the human and material destruction of the war itself, the challenges of post-war reconstruction under the shadow of a still psychotic enemy, and the need to actively engage Ukrainians in the building of a new European nation, Ukraine would best be envisioned as a unitary state with a single, strong level of municipal governments (hromada) and oblasts clearly defined as territorial arms of the national government into which substantial investment must also be made.

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I. BACKGROUND

In order to receive the full funding (50 billion euro) for the Ukraine Facility promised to it under the Ukraine Plan, Ukraine must meet about 150 conditions ("indicators") it has agreed upon with the European Union (EU). Three of those indicators concern its system of subnational governance.

The first indicator (9.1) calls for the passage of legislation that would transform "state executive bodies" at the oblast and rayon levels into "Prefects" who would then have the power to oversee the legality of the decisions of the "bodies of local government" below them. The deadline for fulfilling this indicator was the end of the 1st quarter of 2025. Five draft laws were prepared but rejected. A sixth was passed by the Verkhovna Rada and signed by the President in November (No. 4677). It will come into effect 12 months after the end of Martial Law and has yet to be accepted by the EU.

The second indicator (9.2) calls on Ukraine to conduct a feasibility study –including an action plan-- on endowing territorial communities with legal personhood. Instead of conducting its own study, the government has published one prepared by the Ukrainian Center for Policy and Legal Reform and financed the EU's ULEAD Program.² The study strongly recommends that territorial communities be granted legal personhood because without it they lack the institutional foundation to be considered local self-governments under the European Charter of Local Self-Governments.³ The government, however, has taken no further steps and an action plan is not being developed. But the European Commission has accepted that the condition has been met for the purposes of funding the Ukraine Facility.

The third indicator (9.3) calls on Ukraine to substantially clarify the division of powers between both levels of government and the governing bodies within them by amending the Law on Local Self-Government, as well as sectoral legislation. The deadline for meeting this indicator is June 2026 and work on it is being led by the Ministry for the Development of Communities and Territories of Ukraine. Over the summer, the Ministry choose not to amend existing legislation but to develop a new law on the "Principles of the Delimitation of Powers" including guidelines for assigning responsibilities to different levels of government. The draft law has been submitted to parliament, and the Ministry is working on the guidelines.

² Anatolii Zaiets, Olena Boryslavska, Ihor Koliushko, Roman Maidanyk, Oleh Ilnytskyi, "Concept of Community as a Legal Entity Under Public Law," CPLR, Nov. 2023 pp. 1-25

³ Congress of Local and Regional Authorities, resolution 460, point 26, "A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government" (Dec. 2020) pp.1-54. See also the notes prepared for Ukraine by experts of the Council of Europe's Venice Commission, Adam Doliwa, "Legal personality of communes as a tool for state decentralization," pp.1-34 and Robert Herzog, "Legal Personality of Public Bodies: a general theory and application to local self-governments" pp. 1-18 (March 2021).

II. PURPOSE AND STRUCTURE OF PAPER

This paper examines the problems that Ukraine is having in meeting the conditions for subnational governance reform that it has agreed to with European Union. It focuses on indicator 9.3 and the question of how Ukraine can improve the division of responsibilities between levels of government, as well as between the 'bodies of state executive power' and the 'bodies of local self-government' that comprise them. That said, one of paper's central purposes is to explain why all three indicators are intimately related to each other.

The main argument of the paper is that Ukraine cannot pass legislation that will improve the 'delimitation of powers' between levels of government or the bodies within them without first amending the Constitution. Since the Constitution cannot be amended while Ukraine is at war, the paper argues for abandoning the indicator until a stable peace has been achieved. Indeed, the paper argues that because all the indicators are intimately tied to the same set of constitutional dilemmas, major efforts to reform subnational governance in Ukraine should be put off until a postwar 'constitutional moment' allows for more a more comprehensive approach to the fundamental weaknesses of the current system.

This is a 'big ask'. But not because the paper calls for constitutional reform: Both Ukrainian reformers and the EU have long assumed that the completion of Ukraine's decentralization process will require amending the Constitution. Indeed, in many ways the indicators were written in anticipation of a shorter conflict that would soon be followed by constitutional amendments based on shared assumptions about what Ukraine's post-war system of subnational governance should look like. The most important of these assumptions has been that Ukraine should be conceived of as unitary state with at least two levels of local self-government –municipal and regional –and that the Constitution must be amended to make at least regional self-governments possible.

But efforts to constitutionally endow regional (and perhaps district) 'bodies of local self-government' with their own executive authorities have already repeatedly failed. Moreover, and as we hope to make clear, it is not obvious that giving democratically elected regional councils their own executive authorities will be sufficient to transform them, or indeed the territorial communities that Ukraine already has, into real local self-governments. And last, but not least, there are good reasons to doubt whether transforming regions (and perhaps districts) into self-governments is desirable given the death and destruction of the war, and Ukraine's need to quickly plan, absorb, spend, and account for post-war reconstruction aid.

As such, the 'big ask' is not the call for constitutional reform itself. Rather, it is for both Ukrainian state builders and their European supporters to recognize first, just how debilitating the current Constitution is with respect to subnational governance. And second, how earlier visions of subnational reform may no longer be particularly useful for meeting Ukraine's post-war challenges. In fact, the hope underpinning the paper is that by explaining how Ukraine's subnational order came to be so confused, and why at least some of the ideas about fixing it may have lost their utility, it can help clear the table for a more fundamental attempt to resolve the welter of constitutional problems identified in the indicators.

The first part of the paper analyzes the nature of the 1996 constitutional settlement. Its central argument is that in its attempt to "combine centralization and decentralization in the exercise of state executive power" (Article 132) the Constitution introduced a dysfunctional institutional dualism at all significant levels of administration. It did this in four ways:

- First, it required two very different institutions to cohabit with each other at the most important levels of territorial administration: 'Executive bodies of state power' responsible to the national government and democratically elected 'bodies of local self-government' responsible to their electorates.

- Second, it assigned operational control over financial and managerial powers to the executive bodies of state power, while endowing democratically elected councils with decision making powers that in most cases they could not implement, and which in practice came to center on their right to control the disposition of public assets.
- Third, it defined 'local self-government' as a right that citizens realized through multiple bodies of local self-government and not as a single institution with legal personhood governed by clearly defined executive and legislative organs (Article 140)
- And fourth, it assigned the ownership of all subnational public property used for communal purposes to territorial communities, including assets 'managed' by oblast and rayon councils.

The first aspect of this institutional dualism is well understood. Indeed, it has underwritten a number of unsuccessful attempts to amend the Constitution so that regional and district councils can have their own executive authorities. But while it is certainly necessary to amend the Constitution in order to determine what kinds of governments exist at the regional and district levels, the real problem is more fundamental. Instead, we argue that both sides of the Constitution's institutional dualism must be addressed together: The constitutional assignment of financial and managerial powers to 'bodies of (state) executive power' and the assignment of property rights to 'bodies of local self-government' must be undone at the same time that the cohabitation of national and local government institutions at the regional and district levels is put to rest.

Or put another way, until all levels of subnational government operate as separate legal entities, powers that should be invested in a single institution will continue to be dispersed across multiple entities, blurring lines of accountability for citizens below, the national government above, and creditors and contractors in between. And more particularly, until 'local self-governments' are endowed with legal personhood, the right to local self-governance will have no clear agent for its realization.

The second section of the paper traces how subnational governments have evolved within the constraints imposed by the Constitution, as well as reformers' efforts to amend it. Since 1996, Ukraine's largest cities have progressively broken out from under the tutelage of the state to become among the country's most powerful political forces. Moreover, in a remarkable act of war time state building, Ukraine succeeded in consolidating 12,000 hamlets, villages and small towns into larger units that now have the scale to provide most basic public services. As a result, and for the first time in its history Ukraine now has a universal and comprehensive tier of 1st level municipal or communal governments –hromada-- that have the same basic rights and responsibilities. Nonetheless, the transformation of these hromada into true local self-governments remains blocked by the initial constitutional settlement.

The third section of the paper returns briefly to the indicators to underscore why they cannot be reasonably met without constitutional reform. Finally, the last section argues that given the history of failed efforts to amend the Constitution, the death and destruction of the war itself, and Ukraine's need to rapidly and effectively use reconstruction aid, Ukrainian state builders and their European supporters should abandon their vision of Ukraine as a unitary state with multiple levels of local self-government. Instead, Ukraine should be envisioned as unitary state with a single strong level of municipal self-government and oblast governments clearly defined as territorial arms of the national government. Moreover, both levels must be endowed with legal personhood and clear property rights.

III. THE 1996 CONSTITUTION: LOCAL SELF-GOVERNMENT AS EVERYTHING AND NOTHING

1. The Federal Problem: Oblasts as 'Transmission Belts' or Regional Fiefdoms?

Ukraine has struggled to define its subnational order since declaring independence from the Soviet Union in 1991. The central and still unresolved question that has haunted this struggle is how much autonomy a new and fragile state can afford to give its regional governments when sharing a long border with a more powerful and irredentist neighbor. Unfortunately, the constitutional settlement of the 1990s not only failed to resolve this question but produced a deeply dysfunctional subnational order that continues to cripple both the development of local self-governments all levels, and to hobble the national government's ability to realize state policy.

With independence, Ukraine inherited a system of territorial administration that consisted of some 13,000 units. These included 12,000 tiny villages, settlements, and small towns; 490 districts (rayons); 187 Cities of Regional Significance (COS); 24 regions (oblasts); two Cities of Republican Significance (Kyiv and Sevastopol) and the Autonomous Republic of Crimea. In this system, the 12,000 villages were insignificant from a public administration point of view because they were simply too small (average population of 1,500 souls) to do much of anything. And the most important level of administration were the 24 oblasts.⁴

The oblasts were the most important because the lion's share of all public money, and with it, national government policy flowed through them in two streams, one urban and rural. The rural one ran from the national government to the oblasts, and from the oblasts to the rayons, with the rayons managing and financing whatever public services were delivered in the countryside. The urban stream flowed from the national government to the oblasts, and from the oblasts to the 187 COS in which over 60% of the population lived.

COS received larger shares of some national taxes and controlled more local fees and charges than the rayons. They also financed and managed more network infrastructure than their rural counterparts. But as with the rayons, most COS revenue came through the oblasts. Moreover, oblasts were responsible for ensuring that both rayons and COS respected the normative expenditure standards set by line ministries for the financing of schools, hospitals, and other social sector institutions. Indeed, they had the power to hire and fire key personnel within rayons and COS and to reallocate funds across and within them, when they saw fit.

In addition to controlling the finances and (key) personnel decisions of both rayons and COS, oblasts planned, managed, and financed most subnational investment while running a number of important institutions on their own. These included district heating and power companies as well as tertiary care hospitals, residential facilities for the elderly and the disabled, vocational schools, dormitories, and orphanages. In short, oblasts were the backbone of Ukraine's system of subnational governance, a backbone that provided the President with at least theoretical control over all 13,000 territorial administrations.

That said, control over this vertical chain of command was hotly contested throughout the 1990s. To a large extent, Ukraine's ethnic, religious, and linguistic differences ran along oblast lines, with interests and identities congealing around them.

⁴ To simplify, Crimea and the Republican Cities of Kyiv and Sevastopol are not discussed. But it is important to understand that Kyiv is part oblast and part COS: Part COS because it has a democratically elected mayor and council; Part oblast, because it also has a state-appointed Local State Administration (LSA) operating at the same level of governance and with functions within the city. The relationship between LSAs and COS are discussed at length below. But the point here is that they are even more complicated, opaque, and contentious in the capital which has periodically been convulsed by struggles between the LSA and City Hall, and indeed the Office of the Presidency and the Mayor of Kyiv.

But thickening the soup, was the nature of Ukraine's first generation of oligarchs, many of whom had their roots in the Soviet nomenklatura system of political and industrial control. And many of whom had amassed their initial fortunes by stripping regionally based industries of their most valuable assets, be it in mining, metallurgy, fossil fuels, aerospace, fertilizers, or finance. So, regional linguistic and religious differences were compounded by the emergence of new local bossmen, bossmen who in turn elbowed their way to the center to protect or expand their fiefdoms.⁵

As a result, and at some risk oversimplification, the big question about subnational government until at least the early 2000s --and probably until the Maidan Revolution and Russia's first invasion in 2014-- was whether oblasts were to be transmission belts of national state power or semi-private fiefdoms of oligarchic clans. Indeed, much of the politics of the 1990s can be described in terms of regional groups demanding greater autonomy from the center when boxed out of power at the national level, and greater central control when they got in.⁶ And not surprisingly, the main debate over 'local self-government' in the run up to the 1996 Constitution was what to do with the oblasts. Indeed, about whether Ukraine should be a federal country.

On this score, the answer that Ukrainian state builders ultimately gave was 'No.' And for a simple reason: As much as some of them may have thought that federalism might be a way to accommodate the country's socio-economic and geographic diversity, and as much as many of its oligarchs may have wanted to run their own shows, in the last instance virtually everybody recognized that giving oblasts constitutionally protected rights would provide Russia with all sorts of opportunities to subvert the Ukraine state.⁷

But having rejected federalism, Ukrainian state builders still couldn't agree on how much self-governance they could afford to give the oblasts. As before, Ukraine's size, diversity, and European aspirations all argued for some measure of decentralization. And as before, the fear that Russia would exploit the centrifugal pressures of oligarchic power and regional variation argued for caution. Moreover, in a pattern that would repeat itself later on, the fact that almost everybody saw oblasts as the main problem to be resolved, meant that considerably less thought was devoted to what to do with Ukraine's other 12,000 units of territorial administration.

2. Constitutional Cohabitation: Bodies of State Executive Power / Bodies of Local Self-Government

The 1996 Constitution declared Ukraine to be a unitary state (Article 2) in which 'local self- government is recognized and guaranteed' (Article 7) and the "exercise of state power" is "combine[d] between centralization and decentralization" (*italics mine*, Article 132).⁸ And the instrument that the Constitution put in place to allow for this 'combination of centralization and decentralization' were 'bodies of state executive power' and 'bodies of local self-government.'

These bodies function differently at different levels of public administration. Oblasts, rayons and the Cities of Kyiv and Sevastopol (Article 118) were all given 'executive bodies of state power.' These bodies, known as Local State Administrations, are the executive organs of their respective levels of governance. Their chief officers are appointed by President and their employees work for the national government.

⁵ Heiko Plienes, "Oligarchs and Politics in Ukraine," *Demokratizatsiya: Journal of Post-Soviet Democratization*. 24 (1) Winter 2016: 105-127. Kuchma, Yushchenko, and Yanukovich all fit this mode. Later generations of oligarchs include masters of 'newer' industries like finance, telecommunication and the media.

⁶ Oleksander Fisun, "Ukrainian Constitutional Politics: Neopatrimonialism, Rent seeking, and Regime Change," in Henry E. Hale & Robert W. Orttung (eds) *Beyond the Euromaidan: Comparative Perspectives on Advancing Reform in Ukraine*, Stanford University Press, 2016: 105-123.

⁷ Kataryna Wolczuk (2002) "Catching up with 'Europe'? Constitutional Debates on the Territorial-Administrative Model in Independent Ukraine," *Journal of Regional & Federal Studies* 12:2, 65-88; and Gwendolyn Sasse (2001) "The 'New' Ukraine: A State of Regions", *Journal of Regional & Federal Studies*, 11:3, 69-100.

⁸ The Article reads: "The territorial structure of Ukraine is based on the principles of unity and indivisibility of the state territory, the combination of centralization and decentralization in the exercise of state power, and the balanced socio-economic development of regions that takes into account their historical, economic, ecological, geographical and demographic characteristics, and ethnic and cultural traditions."

They are responsible for implementing state policy at the subnational level, and they control the budgets of their respective levels of government while also allocating national government grants to the territorial communities below them. LSAs are thus clearly territorial arms of the national government that function in a vertical chain of command that descends downward from President's Office and the Cabinet of Ministers.⁹ And not surprisingly, these arms of the national government have the upper hand in the affairs of oblast, rayons, and what are now known as the Special Cities of Kyiv¹⁰ and Sevastopol.

At the same time however, the Constitution endows oblasts, rayons, and the Special Cities with "bodies of local self-government," meaning democratically elected councils. These councils have legal personhood, decision-making power over issues of 'local importance', and control over the disposition of the assets associated with serving local interests.¹¹ But crucially, the councils do not have their own executive organs or administrative structures and thus can do almost nothing in their own name. Instead, they delegate the implementation of whatever decisions they are empowered to make to the LSAs (Article 18 point 6). Or to put the matter more bluntly, the Constitution "combined the centralization and decentralization of power' in oblasts, rayons, and special cities by grafting weak 'bodies of local self-government' (councils) onto very strong 'bodies of executive power' (LSAs).

Meanwhile, all other territorial administrations –meaning more than 10,000 jurisdictions ranging from tiny villages to the 187 COS-- were given councils ('bodies of local self-governments') as well as democratically executives (mayors). In these units of government –now all known as territorial communities (hromada)— the councils, like their counterparts in oblasts, rayons and Special Cities, have both legal personhood and the right to manage assets owned by territorial communities.

They also have decision-making powers over issues of local importance, and since many of these powers are defined in regular legislation, these powers are broader than those of the councils above them.

But the real difference between territorial communities and the subnational governments of above them is two-fold. The first difference is that when the Constitution was passed, and with the important exception of the 187 COS, the overwhelming majority of territorial communities then were simply too small to provide much in the way of public services. As a result, rayons provided virtually all public services in the countryside until territorial communities were amalgamated between 2016 and 2022.

The second difference --and the more important one for our purposes-- is that the Constitution endowed all territorial communities with their own democratically elected chief executives. What this means, that there are no 'bodies of state executive power' in territorial communities, though as we will see discuss later, oblast LSAs exercised very considerable power over the executive organs of COS for many years.

Moreover, the executive organs of hromada are responsible to the LSAs for the implementation of all powers delegated to them by the national government. And because health, education, and social welfare are all delegated functions, most of what territorial communities do, and the lion's share of their budgets-- are subject to state control.

Nonetheless, the fact that all territorial communities are constitutionally endowed with democratically elected councils, democratically elected executives, property rights, and some powers which they perform in their own name (own functions) they resemble the first tier municipal or communal governments in other European countries. But the resemblance is, at best, only partial.

Crucially, territorial communities are not constitutionally defined as local self-governments.

⁹ The dual subordination of LSAs has led to numerous conflicts between the presidency and the government over regional governance and needs to be resolved –as we argue later- in favor of the Cabinet of Ministers.

¹⁰ The LSA no longer has the upper hand in Kyiv. But books will be written about the struggle to determine who should govern the capital and in what way –a book that still has no final chapter.

¹¹ Including the right to name their managing directors. We return at length to the significance property rights of councils in the next sections.

Instead, the constitutional right to self-government is invested in the residents of territorial communities, while the power to realize this right is divided between their councils and their executives.¹² Moreover, and unlike LSAs, the executive organs of territorial communities do not automatically have legal personhood. Instead, they must rely on their councils to create the legal entities necessary to take in revenues, manage budgets, implement investment plans, and indeed to provide virtually all major public services from schooling and transport, to sanitation, social welfare, culture, and public health.¹³

Indeed, from a legal point of view, Ukraine does not have local self-governments at all: In oblasts, rayons, and Special Cities very weak 'bodies of local self-government' cohabit with very strong state run LSAs, while in territorial communities strong councils cohabit with legally weak, though democratically elected executive organs. This asymmetrical dualism, in which bodies of local self-government exist at all levels of the system, but whose real powers differ radically depending on the type of executive authority they are wedded to, has generated endless linguistic and legal confusion.

On the one hand, everybody refers to hromada as local self-governments despite the fact that they lack legal personhood. And despite the fact that power within them is fragmented between strong councils, weak executives, and the dizzying array of legal entities that must be created to actually do anything.¹⁴ On the other hand, the fact that oblasts, rayons, and Special Cities have 'bodies of local self-government' within them, means that when laws refer to "local self-government" it is often unclear whether they refer to territorial communities or to the (very different) 'bodies of local self-government' that exist everywhere. Worse, oblast, rayons and Special Cities are routinely called 'local self-governments' in everyday speech when they are nothing of the sort simply because they have democratically elected councils.¹⁵

3. Institutional Dualism and Cities of Oblast Significance (COS)

Now, let us look a little more closely at how the Constitution's institutional dualism operated in the 187 COS, meaning the in territorial community that most resembled local self-governments between 1996 and the beginning of the amalgamation process in 2016. As we have noted COS did not –and do not—have LSAs. Instead, their executive bodies are composed of democratically elected mayors who had the administrative bureaucracies that run their day-to-day affairs.

Up until at least the early 2000s, however, COS were subordinated to the oblast LSAs both financially and politically. Financially, the LSAs were responsible for providing COS with the funds they needed to finance all their delegated social sector functions. Most of COS budgets went to these functions which included but were not limited to general hospitals and ambulatory healthcare facilities; preschools and general secondary schools; and a myriad of other institutions for social protection, culture, and sports. So, the LSAs were responsible for providing COS with most of their budgets. They also were responsible for ensuring that COS spent these funds in accordance with centrally set expenditure norms. Indeed, the LSAs had the power to shift funds both between COS and the institutions within them when they felt these norms were not being met.¹⁶ In short, COS had little real control over their budgets for a long time,

¹² Article 140, point 1, reads: "Local self-government is the right of a territorial community — residents of a village or a voluntary association of residents of several villages into one village community, residents of a settlement, and of a city — to independently resolve issues of local character within the limits of the Constitution and the laws of Ukraine." Point 3 reads: "Local self-government is exercised by a territorial community by the procedure established by law, both directly and through bodies of local self-government: village, settlement and city councils, and their executive bodies."s of councils in the next sections.

¹³ In some hromada, the Councils have granted their 'executive committee' legal personhood. In all hromada, the councils are responsible for creating the legal entities necessary to deliver most public services. Often, these legal entities are nested within each other with what elsewhere would be called City Hall.

¹⁴ Of course, municipalities across the globe create all sort of legal entities to manage or deliver public service. What is peculiar to Ukraine is the degree to which the process takes place within city hall. Thus, in most major Ukrainian cities departments like finance, education, health and social welfare have all been made into separate legal entities.

¹⁵ And not only in everyday speech: For example, until at least 2018, the official Statistical Yearbook of Ukraine referred to all subnational governments as 'Local Self-Governments'.

¹⁶ By the mid-1990s, the fiscal troubles of the Ukrainian state combined with demographic decline had rendered many of these expenditure norms both impossible and unreasonable to meet (e.g. Y amount of money for each crib in a nursery). As a result, there was constant bargaining between COS and LSAs over both levels of social sector funding and how it was spent.

Equally importantly, the financial powers of LSAs were accompanied by more direct means of political control. State executive power was projected into COS by giving oblast LSAs the right to approve the appointment of key municipal officials, like the heads of COSs' health, education, and social welfare departments.¹⁷ Moreover, the LSAs had considerable leverage in getting these officials dismissed if they wanted to.

Thus, officials who in theory worked at the behest of democratically elected mayors and councils had to be approved by the LSAs and in practice could be dismissed by them. In short, the power of state executive bodies was projected into COS through the LSAs control over both their finances and their personnel decisions.

This projection of state executive power into the executive bodies of COS is grounded in Article 143, point 4 of the Constitution which reads: "Bodies of local self-government on issues concerning their exercise of powers of bodies of [state] executive power are under the control of their respective bodies of [state] executive power." Moreover, the subordination of municipal officials to state executive power in all matters concerning delegated responsibilities is reiterated in Article 11 point 2 of the 1997 Law on Local Self-Government (LLSG)¹⁸, a law passed after the ratification of the Constitution and reaffirming its intent.

As a result, democratically elected mayors and the officials that work for them are legally accountable to executive bodies of state power in general, and to oblast LSAs in particular when managing delegated functions, meaning –at a bare minimum-- all social sector functions.

To summarize, the institutional dualism created by the constitution's requirement that LSAs and councils cohabit at the oblast and rayon levels was projected downward into the COS by politically and financially subordinating their executive organs to the oblast LSAs when dealing with delegated functions.

So, not only do COS lack the legal personhood to be considered true local self-governments, but their operational independence is severely constrained by the political and financial powers the 1996 Constitution and the 1997 LLSG assign to oblast LSAs.

As we shall see later, some of the LSAs powers have been rolled back, and in practice they have lost much of their ability to control the behavior of Ukraine's largest cities. Nonetheless, the extremely expansive definition of what constitutes a delegated power means that all territorial communities continue to operate in the long shadow of the state.

4. Institutional Dualism: Finance and Management vs Property Rights

As we have seen, the Constitution gives very broad powers to oblast and rayon LSAs, while extending state executive power into COS through their delegated functions. As such, state executive power runs from oblast and rayons, into COS for most public sector service responsibilities. At the same time, however, the Constitution effectively assigns all property rights to the councils, and again at all levels of administration. But the real nature of these property rights is radically unclear and in ways that will complicate –maybe even stymie-- efforts to rapidly rebuild Ukraine's war-torn public infrastructure.

To understand why, it is necessary to look closely at Articles 142 and 143 of the Constitution. Point 1 of Article 142 states that:

- *The material and financial basis for **local self-government** is movable and immovable property, revenues of local budgets, other funds, land, natural resources owned by territorial communities of villages, settlements, cities, city districts, and also objects of their common property that are **managed by district and oblast councils.** (Italics mine)*

¹⁷ The Ministry of Finance also approved the selection of COSs' chief financial officers.

¹⁸ It reads: 'Executive bodies of village, settlement, city, and sub-municipal councils are subordinated and accountable to the corresponding councils; in regard to executive powers delegated to them, they are subordinated to the corresponding bodies of executive power.' See also article 76.

Meanwhile, point 2 of Article 143 states:

- Territorial communities of a village, settlement and city, directly or through the bodies of local self-government established by them, manage the property that is in communal ownership.... [as well as to] establish, reorganize and liquidate communal enterprises, organizations and institutions, and also exercise control over their activity...

These provisions clearly assign the ownership of all subnational assets used for communal purposes to territorial communities. But because territorial communities do not have legal personhood, they cannot manage them in their own name. As result, the managerial rights over communal assets –including the right to create new legal entities to put these assets to use—is assigned to the councils.

These provisions are probably the clearest tell of what the authors of the Constitution had in mind when they wrote that Ukraine will “combine centralization and decentralization in the exercise of state power.” On the one hand, bodies of state executive power would be responsible for financing and managing all constitutionally protected social services (as well as much else) either directly by LSAs, or indirectly through the LSAs control over COS budgets and personnel. On the other hand, democratically elected councils would realize Ukrainians’ right to ‘local self-government’ by using their managerial control over communal assets to shape the institutions needed to run the network infrastructure of modern life. But whatever the intent of the founding fathers, these provisions are hugely consequential (and debilitating) for all thinking about post-war subnational government reform.

First, the assignment of communal property rights to the councils reenforces –indeed may be the origin of—the fact that all levels of public administration are dualistic structures that lack a single legal personality. In oblasts, rayons and Special Cities, public authority is uneasily divided between two legal entities. State bodies of executive power clearly run the show, but with one important exception: The LSAs need the approval of ‘their’ councils to change property relations or to create new legal entities to manage assets. As a result, while the councils can do little or nothing in their own name, their managerial rights over communal property right give them tools to block, bend, or distort state policy. And while they undoubtedly sometimes use these powers for good ends, it is hard to see how these ends have much staying power given the councils’ inability to actually implement any of their own policies.

Meanwhile, within territorial communities, power is divided between councils and executive organs who are legally weak and often fragmented because lacking because they can only only implement policies through legal entities whose creation must be approved by the councils and whose management remains responsible to them.¹⁹ As a result, territorial communities not only don’t have legal personhood, but in practice are composed of a plethora of different legal entities (other ‘bodies of local self-government’) who provide public services, contract them out, and/or have stakes in still other entities doing the same. This parcellation of City Hall means that even at the municipal level, where Ukraine has both democratically elected executive organs and councils, it is extremely difficult for citizens below, the state above, or for creditors and contractors in between, to know who should be held accountable for what.²⁰

Second, Articles 142 and 143, make it painfully unclear on what basis oblast and rayon councils manage the communal assets they control because constitutionally all subnational assets used for communal properties belong to territorial communities –territorial communities whose own councils already manage ‘their’ properties.

¹⁹ In saying that the executive organs of territorial communities are legally weak does not mean that their mayors are weak. The fact that they are elected by the entire population and chair their councils gives them very substantial powers. Nonetheless, they must exercise those powers through third parties that are not fully responsible to them and in ways that are often non-transparent.

²⁰ For instance, the head of Lviv’s Financial Policy Department told me that many new legal entities have created that nobody was sure how many of them still existed or what exactly they did as well a number of court cases between the Council and the mayor, as well between third parties and the council about who was responsible for failing to ensure that newly created companies fulfilled their public service responsibilities or other contractual obligations.

As such it is unclear, on whose behalf oblast and rayons councils exercise their property rights. On their own behalf, on behalf of the councils of the territorial communities below, or behalf of the residents of oblast and rayons, residents who at these levels do not belong to any collectivity recognized by the Constitution.²¹

Third, and intimately related to the second point, the fact that oblast and rayon councils manage all communal assets said to be of regional significance has profound implications for any future attempt to divide powers between the national government and would be self-governing oblasts. For example, if it was determined that self-governing oblasts were to be given the responsibility for maintaining and improving secondary healthcare facilities, these facilities would presumably stay on their side of the asset ledger. But if it was decided that the reconstruction of electrical grids, heating systems, and/or regional road networks are best assigned to the national government, the question would become: How should the assets associated with these powers be renationalized? And asking this question, would immediately be followed by another equally problematic one: Whose property is really being expropriated, that of territorial communities or that of the oblast councils?

In summary then, the constitutional settlement of 1996 --and the subsequent laws on Local Self-Government and Local State Administrations-- created a subnational order that is asymmetrical and dualistic along two distinct dimensions. On the one hand, the responsibility for the day-to-day finance and management of things has been assigned to executive organs, but organs that have very different legal statuses at different levels of administration.

On the other hand, the right to manage these assets has been assigned to “to bodies of local self-government” at all levels of the system, but in an unclear and convoluted way. In oblasts, rayons and Special Cities this has given otherwise weak councils blocking powers –though for whom and for what purposes these councils use these powers is unclear. Meanwhile, within territorial communities the property rights of strong councils combined with weak executives has served to fragment public authority across multiple legal entities, blurring lines of accountability citizens, contractors, creditors and the national government. We will return to all these issues in the last section of the paper. But first it is necessary sketch how the constitutional settlement of 1996 evolved in practice in the decades that followed. (See Appendix 1 for a Table that maps the confusion of horizontal and vertical powers resulting from the Constitution’s subnational provisions.)

²¹ These are not abstract problems. For example, the City of Ternopil is currently in a fight with the ‘its’ oblast (council?) about who has the right to determine how the heating pipes and distribution facilities within the city should be modernized when much of the system as a whole is regional and managed by the oblast council –but on whose behalf.

IV. SUBNATIONAL GOVERNANCE SINCE 1996

The evolution of Ukraine's subnational order since 1996 has two distinct lines of development. One is about the ideas that have informed a number of ultimately unsuccessful attempts to amend the Constitution. The other is about how subnational governments have developed within the constraints imposed by the Constitution. In the following we highlight the central aspects of both lines of development, starting with the efforts to reform the constitution.

1. The Conceptual Foundations of Constitution Reform

The 1996 Constitution gave the President very extensive appointment powers. These powers included the right to appoint and dismiss the Prime Minister, members of the Cabinet of Ministers, key figures in the judiciary and, as we have seen, the heads of the LSAs.²² But until the Maidan Revolution of 2014, the main constitutional battle was over the President's right to unilaterally dismiss the Prime Minister, a power which effectively gave the Presidency –and not parliament-- control over the government.

During the Orange Revolution of 2004-5, the Verkhovna Rada passed amendments which ended the President's right to fire the Prime Minister at will. These amendments went into effect in 2006 but were overturned by the Constitutional Court on procedural grounds in 2010, after the reelection of Victor Yanukovich. As a result, it was only with the Maidan Revolution that some basic equilibrium was achieved between the power of the presidency and the power of parliament. Nonetheless, efforts to constrain the President's appointment powers continued. Indeed, they continue to this day.

That said, it is only since the Maidan that they have been explicitly linked to subnational governance reform. Indeed, it seems that the initial plans to create self-governing oblasts and rayons were not accompanied by demands to end the President's power to appoint and dismiss the heads of LSAs.²³ These plans emerged in the early 2000's when a group of reformers began to argue that Ukraine should be a unitary state with three distinct levels of subnational self-government: municipal, rayon, and oblast. After the Orange Revolution, a number of these reformers entered Victor Yushenko's government and under the leadership of Deputy Prime Minister Roman Bezsmertnyi developed a two-step plan for reform. The plan called first for amalgamating Ukraine's 12,000 villages and its 490 rayons into substantially larger units. And second, for granting oblast and rayon councils their own executive bodies, and then for clarifying the responsibilities between these bodies, the councils and the LSAs.²⁴

Between 2007 and 2009, the Bezsmertnyi Team developed maps of the consolidated jurisdictions, trying to ensure that each had the public infrastructure necessary to serve their populations. But the Team doesn't seem to have ever developed a corresponding schema for how it expected to assign functions between the new oblast and rayon self-governments and the rump state-run LSAs. Nor was it clear how functions were to be divided between the three levels of local self-government that the plan envisaged. And while a number of possible constitutional amendments designed to give oblast and rayon councils their own executive authorities were discussed, none of was ever put to a vote in the Verkhovna Rada.

²² On Ukrainian presidentialism see Sujit Choudhry, Thomas Sedelius and Julia Kyrychenko, "Semi-presidentialism and Inclusive Governance in Ukraine: Reflections for Constitutional Reform," IDEA/CPLR, Stockholm 2018. Pp. 1-75 and Oleh Protsyk, "Troubled semi-presidentialism: stability of the constitutional system and cabinet in Ukraine," *Journal of Europe-Asia Studies*, 2003, 55:7, pp 1077-1095. The President's right to unilaterally dismiss the Prime Minister distinguishes Ukrainian (hyper) presidentialism from that of say the French system in which the President nominates the Prime Minister but cannot dismiss him or her without the approval of the National Assembly. More generally, and as in many post-Soviet countries, the appointment powers of the former Communist Party –the so-called nomenklatura system— rose from the dead into the host of the Presidency.

²³ On the disjunction between the initial ideas about territorial reform and efforts to limit Presidential powers see Valentyna Romanova (2011) "The Role of Centre-Periphery Relations in the 2004 Constitutional Reform in Ukraine," *Regional Federal Studies*, 21:3, 321-339. However, a 2003 a draft law (no. 3207) on territorial reform that never was submitted to parliament did call for giving the Council of Ministers the right to hire and fire LSA heads. Valentyna Romanova and Andreas Umland, 'Ukrainian Local Governance Prior to Euromaidan: The Pre-History of Ukraine's Decentralization Reform.' Kennan Cable, No. 44 Sept 2018 pp. 1-13.

²⁴ On the origins of Ukraine's decentralization reforms see: William Dudley, "Ukraine's Decentralization Reform." Working Paper Research Division Eastern Europe and Eurasia, 2019 03/Nr. 1, June 2019 pp. 1-34.

So, it is difficult to say exactly what the Bezsmertnyi Team had in mind. But in the immediate, these uncertainties proved immaterial: The Yushchenko government was simply too weak to push forward the always contentious process of jurisdictional consolidation. As a result, the plan withered on the vine before being shelved by Victor Yanukovych's reelection in 2010.

The basic ideas of the Bezsmertnyi Plan, however, were revived --like many other reforms-- with the Maidan over the winter of 2013-14. But no sooner had the Maidan been taken back (and Kyiv secured) than the Russian's invaded, seizing Crimea and large swathes of the Donbass by March of 2014. So, it was not exactly an obvious moment in which to push forward 'de-centralization'. Even more so because Russia was demanding that Ukraine amend its Constitution to give Lugansk and Donetsk special status, while many in the West argued that the more general 'federalization' of Ukraine was the only way to stop the conflict. Indeed, in the Minsk agreements of 2014 --brokered by Germany and France, and with a gun to their heads-- the Ukrainians signed off on granting Donetsk and Lugansk constitutionally guaranteed autonomous powers should peace be achieved. Which of course it wasn't.²⁵

Nonetheless, in April 2014 --at the onset of a war that still hasn't ended-- the government of Prime Minister Volodymyr Groysmann --former Mayor of Vinnytsia-- published the "Concept of Reforming Local Self-Government and the Territorial Organization of Power in Ukraine."²⁶ Like the Constitution, the 'Concept' rejected federalism. And like the Bezsmertnyi Plan, it envisioned the end goal of '*reforming local self-government and the territorial organization of power in Ukraine*' as the creation of unitary state with three levels of local self-government: municipal, rayon, and oblast.

Like the Bezsmertnyi Plan, the Concept called for the consolidation of villages and rayons into larger units. The new amalgamated villages would be given the same rights and responsibilities as COS, and both would now be called hromada. And like COS, the new hromada would receive most of their grants and transfers directly from the national treasury, and not through the oblast and rayons. The Concept also assigned hromada responsibility for maintaining network infrastructure and providing most day-to-day public services. But it was silent about which, if any, social sector functions might be considered own functions.

At the same time, the Concept --again like the Bezsmertnyi Plan-- called for constitutional amendments to endow oblast and rayon councils with their own executive authorities. But it was more explicit than the Bezsmertnyi Plan with respect to the LSAs. It called for their transformation from "bodies of general competence to control and supervisory bodies in the executive system with the function of coordinating the activities of territorial bodies of central executive bodies in the relevant territory." In short, oblast and rayon LSAs would no longer finance and manage public services in their own name. Nor would they allocate grants and transfers to the units below them. Instead, the primary function of the LSAs would be to coordinate national government agencies at the subnational level and to oversee the legality of the decisions of 'bodies of local self-government'. As such, reformers did not so much expect to parse functions between the national government and new self-governments at the oblast and rayon levels, as to cut the Gordian Knot between the two.

The Concept's radical reduction of the LSAs' role in the system was to be accompanied by a very significant expansion of the responsibilities assigned to the anticipated self-governing oblasts. Self-governing oblast would finance and manage both vocational schools and tertiary hospitals. They would also be responsible for environmental protection, regional transport networks, and perhaps most importantly regional economic development.

²⁵ Both sides failed to abide by the Minsk agreements which were essentially dead on arrival. But ironically, they helped push forward decentralization with Ukraine essentially saying to the West we will decentralize but not federalize. See Maryna Rabinovych, "The Interplay between Ukraine's Domestic Legislation on Conflict and Uncontrolled Territories and its Strategic Use of 'Lawfare' before Russia's 2022 Invasion of Ukraine -- A Troubled Nexus?" *Review of Central and East European Law* 57 (2022) 268-297 and Hanna Shlest, "Imposed State-Building *Comparing Dayton and Minsk*." *Journal of Southeastern Europe* 42 (2018) 327-349.

²⁶ <https://zakon.rada.gov.ua/laws/show/333-2014-%D1%80#n8>

Indeed, the assignment of regional economic development to self-governing oblasts clearly signaled that reformers expected them to be the level of government most responsible for absorbing EU funds.²⁷ Finally, the only function the Concept assigned to the anticipated rayon self-governments was the responsibility for financing and managing rural hospitals.

So, again, the Concept envisaged Ukraine as a unitary state with three levels of local self-government. Oblast and rayon LSAs would be stripped of their role in delivering public services and instead transformed into state bodies of coordination and supervision (prefects). At the same time, the public service responsibilities of both municipalities and self-governing oblasts would be radically expanded.

At the municipal level, villages would be consolidated and the new hromada given the same powers as COS and –with the exception of health care-- the same service responsibilities that rayons LSAs had performed in the past. Most importantly, constitutional amendments would give oblast and rayon councils their own executive bodies so that they could actually plan, finance, and manage the functions assigned to them as self-governments.

As such, the Concept seemed to promise a break with the Constitution's attempt to balance 'centralization and decentralization in the exercise of state power' by marrying 'bodies of state executive power' with bodies of local self-government at every level of administration. Indeed, there is little doubt that this was what reformers hoped to do.

Nonetheless, the Concept was vague about which functions would be assigned to local self-governments as own or delegated responsibilities ('powers' in Ukrainian parlance), and it said nothing about property rights or endowing them with legal personalities. Indeed, perhaps the oddest thing about the Concept is that beyond amalgamation, it says little about what might be needed to strengthen hromada as self-governments and instead concentrates on the regional level even as war and occupation might reasonably have been expected to put regional governance on the back burner.²⁸

2. COS and the Emergence of Big City 'Local Self-Governments'

In a moment, we will return to how efforts to realize the Concept played out in practice between 2014 and Russia's full-scale invasion in 2022. But before doing so it is useful to at least outline the evolution of the relationship between COS and the oblast LSAs in the almost 20 years between the passage of the Constitution and the Maidan.

As we have seen, the Constitution subordinated COS to oblast LSAs with respect to the planning, finance, and management of their delegated functions –meaning all their responsibilities in health, education and social welfare-- as well as much else.

But if this is what the Constitution said, and what the 1997 Laws on Local Self Government and Local State Administrations repeated, then financial and demographic pressure drove practice in a different direction.

On the one hand, the fiscal troubles of the Ukrainian state made it increasingly difficult for the national government to come anywhere close to fully financing the social sector functions that it had delegated to COS, and which it expected LSAs to control through centrally set expenditure norms.

²⁷ Entitlement to the EU's Structural Adjustment and Cohesion Funds are calculated by comparing a given region's socio-economic indicators to the average of all regions in Europe at the so-called NUTS II statistical level. In some countries, most notably Poland, regional self-governments are responsible for planning and managing –within national guidelines– the use of EU funds. Indeed, Poland's success in effectively absorbing EU funds seems to have encouraged both Ukraine and the EU to see self-governing oblasts as critical to Ukraine's decentralization efforts. But despite Poland's success, most new member states did not create self-governing regions and in most, regional economic planning is not entrusted to general purpose governments. More generally, most of the advocates of decentralization in Ukraine seem to have latched on to Poland's success in creating self-governing oblasts while passing over the fact that the foundation of the 'Polish model' really lay in the creation of strong municipal self-governments. On the 'Polish Model' see, Tony Levitas, "Local Government Reform as State Building: What the Polish Case Says About Decentralization" *Studies in Comparative International Development* (2017) 52:23–44

²⁸ What is being suggested here is that instead of saying to their Western supporters, 'No, we will not federalize. But we will municipalize,' the Ukrainians said 'No, we will not federalize, we will decentralize.'

On other hand, falling birth rates and emigration²⁹ were rapidly undermining the coherence of the expenditure norms used to both calculate subnational transfers and then to control how they spent them.³⁰ The norms were based on indicators like the number of beds in a hospital or classrooms in a school. But with fiscal shortfalls and demographic decline they made less and less sense. In short, COS continued to receive a plethora of different but insufficient transfers to run institutions that were desperately in need of downsizing, but which they had neither real authority nor the real desire to restructure.³¹

As this situation grew increasingly untenable two things happened. First, oblast LSAs lost their ability to influence the hiring and firing of the municipal officials responsible for running social sector institutions. And second, the Budget Code was reformed in 2001. These reforms substantially increased the financial autonomy of COS by radically constraining the ability of the LSAs to control their budgets. Most –if far from all—grants now flowed directly from the national government to COS without reallocation at the regional level. Grant formulas were also improved with user-based coefficients (population, number of pupils) replacing input-based norms (beds, classrooms).

And perhaps most importantly, the share of the Personal Income Tax (PIT) going to COS was stabilized at a robust 60% and an equalization grant introduced that guaranteed additional revenues to COS with per capita PIT revenues substantially below the national average. Taken together, these reforms took COS out from under the financial tutelage of the LSAs, increased their revenues and improved the transparency, stability, and equity of their budgets.³²

But while these reforms substantially increased the autonomy of COS vis-à-vis the LSAs, they did so without clarifying who was legally responsible for what, or equally importantly what kind of revenue the PIT share was. Both problems are best illustrated by pre-school education. The new Budget Code improved the formula for allocating funds to COS for the costs of K-12 schooling. Here, maintaining school facilities and managing school networks remained own functions, while paying teachers wages remained a delegated one.

But the reforms also eliminated grants for preschool education. In theory, this should have resulted in preschool education being reclassified as an own function that COS were free to provide as little or as much of as they saw fit. But this is not what happened. Instead, pre-school education, like all other social services, remained a delegated function that COS have to provide to all who want it at nationally mandated standards – but without a per pupil grant to support teachers' wages. As a result, preschool education operates in practice as an own function but is still defined in law as a delegated one.³³

Meanwhile, in an effort to square the circle of maintaining pre-school education as a delegated function but not supporting it with national government grants, the law states that delegated functions are financed not just by grants but by shares of national taxes.³⁴ What this means is that it is legally unclear whether the PIT share is a freely disposable local revenue or a (quasi) earmarked transfer that at least in theory is subject to national government direction and control.³⁵

²⁹ According to the last Soviet census, Ukraine had 51.7 million inhabitants in 1987. The 2001 Ukrainian census put the population at 48.4 million. In 2014, before the first Russian invasion the Ukrainian State Statistical Agency estimated the population to be 45.2 million, a total decline of more than 10%.

³⁰ On subnational budgeting in general and input-based expenditure norms in particular, see Jorge Martinez-Vazquez and Wayne R. Thirsk, *Fiscal Decentralization in Ukraine: Accomplishments and Challenges in the Transition*, Nova Science Publishers, Incorporated, 2010. ProQuest Ebook Central

³¹ As a result, by the early 2000 Ukraine had some of the lowest pupil teacher ratios in the world, and some of the highest numbers of hospital beds, doctors and nurses per capita in the Europe. On hospitals see OECD Multi-level Governance Studies *Rebuilding Ukraine by Reinforcing Regional and Municipal Governance*, OECD 2022. P 25. On pupil teacher ratio's see World Bank Report #42450-UA, "Ukraine: Improving Intergovernmental Fiscal Relations and Public Health and Education Expenditure Policy, Selected Issues" 2008 pp. 1-135

³² On the 2001 Budget Code Reform see Jorge Martinez-Vazquez and Wayne Thirsk op. cit. and Jorge Martinez-Vazquez and Signe Zeikate, "Ukraine: Assessment of the Implementation of the New Formula Based Inter-Governmental Transfer System", Andrew Young School of Policy Studies, Georgia State University, Working Paper 04-08, 2004, pp. 1-56

³³ Access to preschool education differs radically between urban (c. 65%) and rural hromada (35%)

³⁴ Articles 82-85 of the Budget Code

³⁵ Tony Levitas and Jasmina Djikic, *Caught Mid-Stream: "Decentralization, Local Government Finance Reform, and the Restructuring of Ukraine's Public Sector 2014 to 2016"* (Kyiv: SIDA-SKL, 2017) <http://skliinternational.org.ua/wp-content/uploads/2017/10/UkraineCaughtMidStream-ENG-FINAL-06.10.2017.pdf>

The growing political and financial autonomy of COS was in turn accompanied by the fragmentation of their governance structures, in part through the privatization of many municipal services, and in part through the creation of new legal entities within City Hall. Thus, COS have transformed what are normally internal departments – like finance, education, and revenue collection— into separate entities. Moreover, these legal entities often contract out both regular public services –like street cleaning, road repair, and building maintenance— as well as more specialized tasks –like developing strategic plans, contracting capital investments, and organizing special events. As a result, many municipal services have been privatized by legal entities whose own governance structures are far from transparent.

Three factors seem to be driving COS (and now other hromada) to create these legal entities. First, and most importantly, it is difficult to provide any public service that requires accounts, procurements, and contracts without legal personhood. Second, municipal officials –lacking the protection of legal personhood-- see the creation of such entities as a way to insulate themselves from personal liability. And third, placing municipal functions in the hands of new legal entities may help resolve conflicts between councils and mayors because in the last instance the councils –as owners—retain control over them. But whatever the case, there seems little question that the governance structures of Ukraine’s largest cities are unusually fragmented, and that much of this fragmentation has its origins in the Constitution’s separation of property rights from financial and managerial powers, and to the absence of legal personhood that has accompanied this separation.

3. Subnational Reform Since the Maidan Revolution

Now let us return to the implementation of the “Concept for Territorial Reform” in the eight years between Russia’s first invasion of February 2014 and its second ‘full scale’ assault in February 2022. In late 2014, and in anticipation of territorial amalgamation, the Budget Code was again overhauled.

The soon to be created hromada were granted the same 64% share of PIT that COS already enjoyed. At the same time, a number of different transfers controlled by the LSAs were consolidated into a new, centrally allocated healthcare grant both to increase the financial autonomy of hromada and to clarify their role in the sector. As a result, and alongside their PIT shares, municipalities would now receive two major grants directly from the national government--one for teachers’ wages, and one for financing hospitals.

Then, in 2015, the Verkhovna Rada took the second and most consequential step in realizing ‘Concept’ by passing a law mandating the voluntary amalgamation of territorial communities into larger units. Territorial communities were given four years to amalgamate on their own, and failing that, to be consolidated from above.

First movers were eligible for significant investment grants and many jurisdictions decided to amalgamate on their own. But in the end, the process required a fair amount of compulsion to be completed. Nonetheless, in a remarkable act of wartime state-building Ukraine succeeded in consolidated its 12,000 rural territorial communities into 1,469 first-tier local governments by the end of 2021.³⁶ Thus, for the first time in its history, Ukraine has municipal governments with same rights and responsibilities operating everywhere in the country.

But efforts to amend the Constitution to allow for the creation of self-governing oblasts and rayons failed. And in ways similar to that of the Bezsmertnyi Plan: A number of constitutional amendments were proposed and discussed but none was ever put to a vote in the Verkhovna Rada. To be sure, the ‘Concept’ was clearer than previous documents about how reformers expected to divide powers between the new oblast and rayon self-governments and the rump LSAs.

But little work had been done to get line ministries to think through or accept the loss of powers that decentralization might entail.

³⁶ As of June 2020, 1,070 (out of 1,469) amalgamated hromada had been establish, with a total population of 12 million people. The rest came online in 2021, just before the full-scale invasion.

Moreover, President Zelensky objected to the presidency losing its right appoint the heads of LSAs, and probably to the more general reduction of the LSAs' powers.³⁷ But the most important reason constitutional amendments were never voted on after 2014 is almost certainly that in the middle of a war with Russia it was extremely unlikely that two-thirds of a fractious parliament would vote to create truly self-governing oblasts. So, the plan to transform Ukraine into a unitary state with three levels of local self-government was again put on hold.

Meanwhile, other parts of the Concept came unstuck. The Maidan Revolution revived not just the Bezsmertnyi Plan, but a wide range of other initiatives, including a plan to create a single-payer health care system.³⁸ Under a single payer system, healthcare financing is concentrated in the hands of a single national government agency which then contracts out the provision of services to private and public providers on a competitive basis. In Ukraine, creating such a system required the recentralization of funding that was currently going to oblasts, rayons, and COS to finance their healthcare facilities, including most notably the new health care grant. As such, the single payer reform collided with the idea that healthcare should be a core function of all three levels of local self-government.

In the end, the healthcare reformers won out and in another remarkable act of wartime state-building Ukraine succeeded in standing up an operational single-payer system between 2016 and 2019.³⁹ But the new system affected the decentralization reforms in two ways. First, it took off the table the single most important function that local governments reformers had anticipated assigning to rayons. Indeed, shortly after the single-payer system went into operation, the government decided to strip the newly consolidated rayons of all their public service responsibilities, effectively mothballing them as institutions. With the full-scale invasion, however, they were revived as military administrations.⁴⁰ As a result, rayons now exist solely as territorial arms of the national government and the impetus to eventually transform them into self-governments seems to have been lost.

Second, the creation of a single-payer health care system helped further shift power away from oblasts towards Ukraine's biggest cities. Oblast and city councils are still the owners of most healthcare facilities, and as owners, they remain responsible for maintaining their plant and equipment as well as for covering their debts 'in the last instance.' But they no longer finance their day-to-day costs, costs which are now paid for through contracts with the new National Health Agency.

But this shift in healthcare finance has been felt differently by oblasts and big cities. For oblasts, it has meant a significant loss of power: They no longer finance their own facilities, but they have lost the power to allocate funds to rayons or big cities so that they can finance theirs. Equally importantly, oblasts have very little freely disposable revenue, making it difficult for them to cover the costs of maintaining or improving the physical plant or equipment of the facilities their councils still own.

Meanwhile, the situation in Ukraine's big cities is different. They too have lost the transfers which they once used to finance the operating costs of their hospitals and clinics. And like the oblasts, they too still have to worry about maintaining the buildings and equipment of the healthcare institutions they still own. But unlike the oblasts, their 64% PIT share gives them a robust source of revenue that grows with the economy as whole, and which despite the legally confused status of the share remains in practice freely disposable.

As a result, the finances of big cities have improved relative to those of oblasts since the Maidan. This, in turn, has allowed them to pull both institutions and functions away from the oblasts simply because they are better able to finance them.

³⁷ In December 2019, Zelensky submitted constitutional amendments to the Verkhovna Rada but withdraw them a month later. See https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67644 A second set of amendments was developed in late 2021 but never submitted to parliament. See <https://decentralization.ua/news/13969>

³⁸ On the underappreciated tension between the two reforms, see Levitas & Djikic, op. cit.

³⁹ See Caryn Bredenkamp et al. Health Care Financing Reform in Ukraine: Progress and Future Directions, World Bank, 2022 pp. 1-99

⁴⁰ Presidential Decree No. 68/2022, February 2022 <https://zakon.rada.gov.ua/laws/show/68/2022#Text>

Thus, and for example, Lviv has not only taken over many of the vocational schools that the oblast previously ran, but it has begun to provide specialized medical services that were previously reserved for the tertiary hospitals that oblasts continue to own.⁴¹

Which brings us to our last point about how the decentralization reforms have played out since the Maidan. As we have noted, with amalgamation all hromada acquired the same rights that previously belonged to COS, including the right to 64% of the PIT generated in their jurisdictions. But as consolidation proceeded, it became painfully clear that all 64% shares were not equal. This is because PIT revenues are shared with hromada not on the basis of where taxpayers live, but on where employers legally register their employees' place of work. As a result, large urban centers receive the PIT payments of people who commute to work but live elsewhere, as well as those of people who may live and work in the same hromada, but whose employers consider them to be working somewhere else.⁴²

Indeed, recent studies suggest that between 20 and 30% of the PIT share go to hromada other than the ones in which taxpayers actually live, vote, and receive most of their public services.⁴³ As such, the current system for allocating PIT significantly overfunds larger urban jurisdictions (read: former COS) at the expense of the newly consolidated hromada around them. Moreover, and equally, importantly it also breaks the link between taxpayment and voting that comes with allocating PIT by place of residence, weakening the incentives citizens have to engage with their municipal government and to hold their elected officials accountable for their performance.

⁴¹ Under its "Unbroken Chain" program, Lviv invested heavily in the equipment necessary to provide specialized services –like cardiology, oncology, and prosthesis — to its citizens in general and war veterans in particular. The municipal provision of these services took patients and money away from the oblast. And in retaliation, the oblast tried to move the legal registration of its hospitals from Lviv to a neighboring hromada in order to deprive the city of the revenue it got from the PIT share of employees working in these hospitals. The courts however, blocked the move. Conversations with Lviv city officials in 2021.

⁴² Tony Levitas, "How Should Ukraine Share the Personal Income Tax," Decentralization Support Project, SALAR/SKL 2021, pp. 1-22. According to the law it should be paid to the jurisdiction in which the employer is legally registered. In practice, employers are free to allocate PIT to the jurisdiction in which their headquarters are legally registered or to the jurisdiction in which they have a legally registered business unit. Large agricultural companies sometime return it to the jurisdictions in which their employee actually live. See KSE, ULEAD, SALAR, "How the PIT Payment System Should be Reformed in Ukraine" Kyiv, 2022, pg. 1-2

⁴³ Oleksandr Tsymbal, Volodymyr Sarioglo, Yaroslav Ostafilchuk, Oleg Yaroshy, and Tetyana Lukovych, Ihor Onyshchuk and Ihor Gerasymchuk, "Assessment of the Impact of Changes in the Personal Income Tax Allocation Mechanism on Municipal Budgets" ULEAD/POLARIS, Kyiv, 2025 pp 1-30

V. EU CONDITIONALITY AND THE CURRENT IMPASSE

1. Recap of the Argument

Before returning to the indicators that Ukraine is being asked –and has agreed-- to implement in the middle of an existential war, let us recapitulate the argument.

In 1996, Ukrainian state-builders understandably rejected federalism as a dangerous project given the country's long border with an irredentist neighbor. Instead, they tried to “combine decentralization and centralization in the execution of state power.” To do so, they wrote a constitution that required democratically elected authorities to cohabit with state-run institutions at every significant level of administration, while assigning property rights to the self-governing half of the arrangement, and most financial powers to the LSAs. This institutionalized dualism prevented endowing territorial administrations with legal personhood. It also entailed defining ‘local self-government’ as a ‘right’ to be realized by ‘bodies of local self-government’ and not as a single institution with a clearly defined governance structure, and a uniform set of obligations and powers.

This dualism is most obvious at the oblast and rayon levels. Here, councils do not have their own executive authorities and real power (and much money) cascades through the LSAs from the state in general, and sometimes the Office of the Presidency in particular. This dualism also operated in COS, though more mutedly. Here, democratically elected mayors headed COS's administrative structures –their executives-- while also chairing their councils. Nonetheless, and at least initially, LSAs controlled the hiring and firing of key municipal officials as well as the lion's share of their expenditures. Most importantly, oblasts, rayons, and COS –to say nothing of Kyiv and Sevastopol as well as 12,000 still unconsolidated territorial communities - were all called ‘local self-governments’ in both law and everyday speech when at a minimum they were all very different constructs. And at a maximum, none a construction that could really be called a self-government.

No sooner had this system of cohabitation been put in place, than it began to break down –at least in Ukraine's largest cities. Here, fiscal pressure, economic distress, demographic decline and reform all worked to undermine state tutelage. The appointment powers of the LSAs were progressively ended; transfers slowly and fitfully consolidated; and COS given a significant share of PIT, a share which functioned in practice as a freely disposable revenue even if the law suggested that in the last instance the state could require COS to spend it on delegated functions. Meanwhile, the councils used their property rights to create new bodies of local self-government within and outside of City Hall, and to entrust them with the finance, management, and contracting out of public services.

COS thus gained power at the same time that power within them was dispersed across a plethora of new ‘bodies of local self-government’. This fragmentation of municipal authority has its roots in fact that the legal status of COS's executive organs lay in the hands of the councils and could be divvied up between a variety of different legal entities, or deprived of legal personhood entirely. And this fragmentation was driven forward in part by convenience, in part as a way for local elites to scratch each other's backs while getting something done⁴⁴, and in part by municipal officials looking to insulate themselves from questions of personal liability.

In the years following the Orange Revolution, the vision was obscured by the inability of Tymoshenko government to pursue consolidation and by the lack of consensus about which powers should be given to self-governing oblasts and rayons, and which should be retained by the LSAs. But it resurfaced with the Maidan and paradoxically gained momentum with Russia's seizure of Crimea and its invasion of the Donbass: As Russia demanded the federalization of Ukraine --and much of the West nodded along-- the Groysman government strengthened big cities while municipalizing the countryside.

⁴⁴ For an interesting argument about how the lack of clear of clear local property rights can produce both positive and negative social outcomes see, Oleksandra Keudel, “Transforming Patronal Democracy Bottom-Up: Two Logics of Local Governance in Ukraine.” In Balint Malovics and Balint Magyar (eds), *Ukraine's Patronal Democracy and the Russian Invasion*, (CEU Press, Vienna, Budapest, New York) 2023, pp. 373-394

Municipalization, however, remained tied to the original Bezsmertnyi Plan and both Ukrainian reformers and their European advisors continued to push for constitutional amendments that would give oblast and rayon councils their own executives authorities while transforming LSAs into prefects. But the necessary constitutional amendments were never given a real hearing in parliament because there was still little agreement about how functions should be divided between LSAs and new self-governing oblasts and/or rayons, or for that matter what role the Office of the Presidency should have in subnational governance. And perhaps most importantly, it seemed imprudent to try to create self-governing oblasts in the middle of a war.

Municipalization, meanwhile, took the air out of the effort to create self-governing rayons. In part this was because the creation of a single-payer healthcare system –another remarkable act of wartime state building--stripped rayons of the most significant function reformers expected to assign to them. But more importantly, it was because of the politics that amalgamation unleashed: For decades, rayons had lorded over the countryside and once out from under them, territorial communities had no interest in seeing them revived. Especially since with consolidation rayon assets could be transferred to hromada who not surprisingly wanted everything they could get.⁴⁵

Thus, on the eve of Russia's full-scale invasion in 2022, Ukraine had succeeded in creating a universal and comprehensive tier of municipal self-governments for the first time in its history. This is a remarkable achievement even if it still needs to be consolidated. But what municipalities do in their own name and what they do in the name of the national government remains poorly specified, as do the powers of their still bifurcated governing bodies, and the nature and character of their most important revenue.

Equally troubling, little progress has been made in clarifying the constitutional status of oblasts or rayons, or in mapping how functions might best be parsed between them and the national government. Indeed, plans to create self-governing rayons seem to have been taken off the table. As such, the vision of Ukraine as a unitary state with multiple levels of local self-government is as distant as before, even if along the way it has lost a level. Worst of all, in both law and everyday speech all levels of territorial administration continue to be called 'local self-governments' when in fact no such institution really exists.

2. Constitutional Dualism and Subnational Government Reform

The European Union has been deeply engaged with Ukraine's subnational reform efforts since at least 1996 when Ukraine signed the European Charter of Local Self-Government. This engagement has been continuous and has come through a variety of institutions and modalities including the review of strategic plans and draft legislation by the Venice Commission; the provision of expert advice by the Council of Europe; and the substantial financial and technical assistance that the U-LEAD program has provided to both the national and subnational governments.

It is beyond our purpose here to trace the long and complicated history of this engagement, or the recommendations and actions that have resulted from it. But at least a few things need to be said. The first is that the EU's assistance has consistently focused on many of the critical weaknesses discussed in this paper. From the start, the EU has provided support to help create self-governing oblast and rayons; to develop an arms-length system of overseeing the legal probity of local self-government decisions and, at least since 2017, on endowing local governments with legal personhood.

The second is that the EU's technical and financial assistance have operated within the framework established by both the Bezsmertnyi Plan and the 2014 "Concept of Reforming Local Self-Government and the Territorial Organization of Power in Ukraine."

⁴⁵ The most important consequence of abandoning the creation of rayons from a public administration point of view lies in education: In 2016, Ukraine adopted legislation designed to create separate primary from secondary education, to end the Soviet system of placing all K-12 education in the same building, and to create self-standing high schools. Most newly consolidated hromada do not have enough teenage children to support high schools of a reasonable size, and their finance and management would logically have fallen to self-governing rayons. Without rayons, however, it is unclear who should finance and manage rural high schools.

As such, EU local government programs have generally shared with Ukraine's own local government reformers the assumption that the end goal of the decentralization process should be the creation of a unitary state with three levels of local self-government --municipal, rayon and oblast. In accepting this assumption, European advisors have also embraced --albeit often uneasily--the language of Ukraine's 'decentralizers'. This language, derived from the Constitution, insists that all three levels of territorial administration are in fact already 'local self-governments' and that the principal obstacle to completing the decentralization process lies in endowing oblast and rayon councils with their own executive authorities.

The third is that in accepting this framework and the assumptions behind it, EU technical assistance has generally left undiscussed the more profound difficulties that the Constitution's institutionalized dualism has created for establishing real local self-governments at any level of the polity. To be sure, European advisors have long understood that real local self-governments cannot function while they are in the immediate grasp of state-run institutions like the LSAs. And as we have indicated, they have pressed for endowing subnational governments with legal personhood.

But what has generally been left unexamined is how the issue of state executive power, and the issue of legal personhood represent two aspects of the same institutional dualism put in place by the 1996 Constitution. To be sure, it is now well understood that the Constitution requires that bodies of state executive power (LSAs) and bodies of local self-government (councils) to cohabit at all significant levels of territorial administration, and that this cohabitation was designed to ensure the vertical subordination of all levels of territorial administration to the national government in general, and the Office of the Presidency in particular.

What is less well understood is that the institutional separation of powers that resulted from absence legal personhood and the attendant assignment of property rights to one half of the arrangement: On the one hand, executive bodies are responsible for the day-to-day finance of governmental affairs, while on the other councils are responsible for the ownership and disposition of publicly owned assets, including the appointment of the individuals who direct the institutions using these assets.

At the municipal level, both elements of this dualism have become blurred. The national government's ability to vertically control municipal operations has broken down as COS have progressively broken out from under LSA control. This process was then extended to the countryside with creation of amalgamated hromadas and the stripping of rayon LSAs of both their assets and their allocative functions. Nonetheless, the constitutional shadow of vertical control persists in the fact that mayors --as the heads of the executive bodies of hromada-- remain agents of state executive power in relationship to their delegated functions while hromadas' lack of legal personality leave them personally liable for any damages their public decisions may create.

Similarly, the apparently clear division between the managerial powers of executive bodies and the ownership and appointment rights of councils have also become fuzzy at the municipal level because democratically elected mayors head both their executive bodies and chair their councils. Nonetheless, the impact of the initial separation persists and can be seen in the horizontal proliferation of new bodies of local self-government both within and outside of City Hall. In short, the separation of financial powers from ownership rights at the municipal level and the absence of legal personhood has encouraged the two institutions running municipalities to conduct their governance responsibilities through third parties.

Indeed, the central claim of this paper is that both sides of the 1996 Constitution's institutional dualism must be addressed simultaneously if Ukraine is going to clarify its system of subnational governance. Or put more simply, it is impossible to clarify the division of powers between levels of territorial administration without first clarifying the relationship between the executive bodies and councils whose cohabitation the Constitution requires at all levels of administration. At the same time, however, it is equally impossible to clarify the relationship between the two entities that govern each level of territorial administration without first clarifying which them is acting in the name of the state --and with state owned assets-- and which of them is acting in the name of their local electorates and with locally owned assets.

With that said, let us briefly return to the conditions that EU has imposed on Ukraine in order to receive the full funding promised to it under the Ukraine plan.

3. Indicator 9.1: Prefects and Legal Oversight

In accordance with Bezsmertnyi Plan, indicator 9.1 of the Ukraine Plan calls on Ukraine to pass legislation that would transform oblast and rayon LSAs into prefects whose primary responsibility would be to oversee the legality of the decisions of 'bodies of local self-government'. Work on this legislation has been going on for a number of years and was initially conceived of as a new Law on Local State Administration that would push forward the basic ideas laid out in the 2015 Concept of Territorial Reform, but without requiring the constitutional amendments that could not be passed under Martial Law.

The initial draft of this Law (4298 October, 2020) was ambitious and tried to do three things: Clarify the nature of legal oversight; constrain the appointment powers of the presidency by requiring prefect heads to be drawn from qualified pools of civil servants; and specify that prefects would no longer be responsible for the provision of public services and instead perform only regulatory functions. But efforts to pass such a comprehensive law were upended from two directions: On the one hand, the President's Office rejected limitations on its appointment powers. And on the other hand, nobody was ready to strip the new prefects of their sectoral responsibilities without knowing if and when self-governing oblasts would be constitutionally mandated.

A number of other drafts of the law were prepared. But all of them failed to make it to or through parliament. As a result, Ukraine missed the spring 2025 deadline for meeting the indicator, in theory at least temporarily reducing the flow of EU funds to the Ukraine facility. So, legislators shifted gears and instead of trying to develop a new Law on Local State Administrations they opted to amend the existing Laws on Local State Administrations and on Local Self-Government.

The amendments, passed by the Verkhovna Rada in November 2025, assign responsibility for overseeing the legality of hromada decisions to the rayon LSAs while leaving it to the Cabinet of Ministers to determine which agency of the national government agency will oversee the legality of oblast decisions.⁴⁶ The amendments, however, restrict these oversight powers to decisions concerning delegated functions, and not as was originally intended to the decisions bodies of local self-government take with respect to their budgets or their assets.

As such, the amendments simply reaffirm powers that the national government already has, while leaving uncertain the legal regulation of many key financial decisions.⁴⁷ Equally importantly, the amendments do not require that the heads of the LSAs to be professional civil servants. Nor do they limit the appointment powers of the Presidency. As a result, the amendments do little to address the concerns that led the EU to formulate the indicator in the first place. That said, it is difficult to imagine that they will be rejected in the middle of existential war in which Ukraine needs all the help it can –and should— get.

4. Indicator 9.2: Legal Personhood

With the exception of the United Kingdom and Ireland –who both have long common law traditions of local government-- all EU Member states grant municipalities legal personhood. And while the European Charter of Local Self Government (ECLSG) does not explicitly require granting local governments legal personhood contemporary commentaries on the intent of the document do.⁴⁸

⁴⁶ The final provisions of Law no 4677 however foresee that a year after the law goes into operation, oversight responsibilities over the legality of hromada decisions will be shifted to oblast LSAs.

⁴⁷ Hromada in general, and the Association of Ukrainian Cities in particular objected to extending the oversight powers of the national government to the legality of their financial decisions on the grounds that their finances were already heavily controlled by the Ministry of Finance. More generally, the entire discussion of legal oversight sidestepped the fact that Ukraine now has many types of local self-government bodies and absent legal personhood will continue to invent more of them.

⁴⁸ Congress of Local and Regional Authorities, resolution 460, op. cit. point 26 pg. 11

With that said, let us briefly return to the conditions that EU has imposed on Ukraine in order to receive the full funding promised to it under the Ukraine plan.

Nonetheless, it was only in 2017 that the question of legal personhood began to be seriously discussed in Ukraine⁴⁹, and only in 2021 --on the eve of Russia's full-scale invasion and considerably after the declaration of Martial Law-- that the European Union began to consider it an important component of Ukraine's decentralization reforms. Thus, over the course of 2021, the Council of Europe held six thematic meetings on the legal personhood of subnational governments and prepared a number of different policy papers on the subject.⁵⁰

Unfortunately, these efforts came to very little. Indeed, according to the summary report prepared by the Council, most Ukrainian policy makers, including municipal officials and their Associations, saw no need to introduce legal personhood into Ukraine's system of subnational governance. On the one hand, most Ukrainian legislators seemed to feel that granting hromadas legal personhood might threaten the country's territorial integrity, a fear that European advisors understood, but which they nonetheless argued was deeply misguided. On the other hand, most representatives of territorial communities claimed that Ukraine had developed legal workarounds to ensure the security of contracts; to alienate and transform properties; to pursue or defend their interests in court; and to be held accountable for their behavior by citizens. These claims were met with a certain amount of incredulity by the Council's experts.⁵¹ Nonetheless, the consultation process ended with an agreement that the national government would conduct its own analysis of the possibilities for introducing legal personhood, including an action plan for next steps. Indeed, it was this agreement that was then put in the Ukraine Plan as a condition for the full funding of the Ukraine facility.

But given Russia's onslaught in 2024, the government not surprisingly failed to move forward with this analysis or the expected action plan. Instead, the indicator has been checked off as having been fulfilled because of the publication of a book-length prepared by the by the Center for Legal and Policy Reform.⁵² This study explains the reasons why subnational governments are endowed with legal personhood in Europe and explores some of the difficulties its absence creates. It also strongly recommends that Ukrainian municipalities be given legal personhood, either by amending the Constitution or through other legislation.

That said neither the study nor the indicator connects the absence of legal personhood with the proliferation of 'local self-government bodies' at the municipal level or the difficulties that this proliferation will create for overseeing the legality local self-government (sic) decisions. Moreover, and equally importantly, it does not discuss how the property rights of oblast councils intersect with --and radically complicate-- any project to create self-governing oblasts, or to modernize network infrastructure that serves both cities and regions and whose real ownership remains constitutionally uncertain.

5. Indicator 9.3: The Delimitation of Powers

The original version of indicator 9.3 on the 'Delimitation of Powers' called on Ukraine to amend the Law 'On Local Self-Government' as well as sector-specific legislation so that:

- These legislative amendments will lead to a better distribution of powers between local governments and executive authorities based on the principles of subsidiarity and decentralization, will help to eliminate conflicts of competence between different tiers of central, regional, district and local authorities, and within bodies of local self-government and proper quality of public services at the local level, and efficient use of budget funds.

⁴⁹ George Milbradt, former Minister President of Saxony and Angela Merkel's Special Envoy to Ukraine for Decentralization is largely responsible for putting the issue on the map.

⁵⁰ For a summary of these efforts see Center of Expertise for Good Governance, "Policy Advice on Legal Personality at Local Level", Strasbourg, 20 December 2021 CEGG/PAD (2021)14 pp. 1-66.

⁵¹ Ibid. pp. 14-19

⁵² Anatolii Zaiets, et al. op. cit. See also the summary of the book prepared by the same authors and published under the same title in November 2023 pp 1-27

The language and wording of this indicator reproduce the confusions created by the institutional dualism of the 1996 Constitution. Like the Constitution, its language oscillates between assuming that Ukraine already has 'local governments' (the first use of the term) and the reality in which they exist not as a single entity but as "local government bodies." But unlike the Constitution, it uses a single term --'executive authorities'-- to describe two very different institutions, the very strong LSAs and the executive organs of hromadas who, lacking legal personhood, are institutionally weak.

In short, the indicator asks Ukraine to use normal legislation to clarify the relationships between institutions whose constitutional definitions are incoherent and which take radically different forms at different levels of governance: At the oblast level, nothing like a local self-government exists and its executive bodies are clearly national government institutions, even if they have to operate through assets they do not own.

Meanwhile, territorial communities lack legal personhood and though endowed with both democratically elected councils and executives operate more as constellations of legal entities with no clear center of gravity. Moreover, they have little in the way of own revenues or functions; most of their powers are delegated; and their most important revenue --their PIT share-- is misallocated between them and subject to state control.

The indicator also calls on ministries to review their operations in order to determine which public sector responsibilities might be better administered if they were assigned to different levels or types of subnational government. Reassigning functional responsibilities to new and different entities is always an exceptionally difficult and time-consuming process. Indeed, many decentralization efforts have foundered on it. But asking ministries to think about reparsing their responsibilities between types and levels of government bodies whose basic structure is unclear makes no sense at all. It is like asking people to choose which group of strangers they would prefer to entrust with their valuables.

Not surprisingly, efforts to fulfill the requirements of the initial indicator broke down. Instead, the EU agreed that Ukraine should develop a new two-part Law on the Delimitation of Powers, with the first part defining the principles that would guide the process, and the second part outlining how at least some functions might be reassigned in the future. The 'Principles' section of the legislation was submitted to parliament in February of 2026, while a draft of the law that would suggest how some functions might be better assigned to bodies and levels of government has been completed but not submitted to the Verkhovna Rada.

VI. THINKING ABOUT POST-WAR CONSTITUTIONAL REFORM

Since the early 2000s, Ukrainian local government reformers and their supporters within the European Union have shared a vision of Ukraine as unitary state with multiple levels of local self-government. And for years, both have argued that the primary constitutional obstacle to realizing this vision lies in passing amendments that will endow democratically elected councils at the oblast and perhaps rayon levels with their own executive authorities.

Unfortunately, this is not true. Or if not entirely false, it reduces a much more profound problem to one of its expressions. The more profound problem is that Ukraine's founding fathers were terrified (with good reason) of regional self-governments in particular and (with less reason) of local self-governments in general. So, they wrote a constitution that called all subnational governments "local self-governments" because all were given democratically elected councils and because they endowed these councils with property rights. But they ensured that none of these subnational governments were really local self-governments because all were denied legal personhood and because in practice their executive bodies were subordinated to the national government in a vertical chain of command descending from the presidency.

Over the last 30 years, the nature of this subnational order has shifted at the municipal level. First, in Ukraine's largest cities, and beginning with the 2001 reform of the Budget Code democratically elected mayors progressively broke out from under the political and financial tutelage of the oblast LSAs. Then, between 2016 and 2022, this process was extended to the countryside by amalgamating territorial communities and taking their executive authorities out from under the thumb of the rayon LSAs. As a result, at the municipal level we now have both democratically elected executives and democratically elected councils, meaning governments that appear to be local self-governments, but still really aren't.

On the one hand, mayors are still considered agents of state executive power when dealing with delegated functions, meaning most of what they do. On the other hand, territorial communities are composed of run by multiple legal entities that are all ultimately responsible to the council but whose governance structure and property rights are often unclear and non-transparent. In short, when we call hromada 'local self-governments' we still don't know exactly what we are referring to.

Worse, all Ukrainian subnational legislation is incredibly complicated and nontransparent because it all must define not the powers and responsibilities of hromada, but the relative decision-making powers of two distinct institutions that cohabit under a common linguistic tent that nonetheless has no firm legal grounding. And the central claim here is that this tent will blow in the wind, and that nobody will know who is really responsible for the decisions taken within it, until hromada have been granted legal personhood, and their councils and executives defined as the governing bodies of a single legal entity.

But for the moment, let us bracket the problem of hromadas and legal personhood and instead return to the 'oblast question'. As we have seen, almost everyone concerned with subnational governance in Ukraine believes that the 'decentralization process' can only be completed by amending the Constitution to allow oblast councils to have their own executive authorities. Indeed, this remains the primary objective of post-war constitutional reform for both Ukrainian advocates of local self-government and their supporters within the EU.

In the following, I argue that at least for the foreseeable future this objective should be abandoned. Instead, reform efforts should focus on constitutional amendments that would define Ukraine as a unitary state with strong municipal self-governments. At the same time, I outline potential directions for reform at both the oblasts and hromada levels. Oblast should be transformed into territorial arms of the national government, while being taken out of the hands of the presidency.

Hromada should be granted legal personhood, their own and delegated functions more clearly specified, and their PIT shares defined as freely disposable revenues that are allocated to them on the basis of where taxpayers live and vote.

1. Why Oblasts Should Not be Made into Local Self-Governments

There are many reasons why Ukraine should stop considering self-governing oblasts to be critical to the country's efforts to create a democratic and effective system of subnational governance. Some of these reasons are primarily political. Others reflect the more technical issues that Ukraine has long struggled with, like which level of government should do what. But both the political and technical problems have been compounded by the war and in ways that make their post-war resolution more difficult than before.

Politically, the most important reason why efforts to transform oblasts into local self-governments should be abandoned is simply because even if a secure peace can be achieved, Ukraine's geopolitical situation will not change: Ukraine will still share a long border with a psychotic enemy hellbent on destroying the country's sovereignty --and with it, NATO-- in anyway it can. As such, the territorial integrity of Ukraine will remain at risk, and under these conditions it is hard to imagine a super majority of MPs voting for the constitutional amendments necessary to create self-governing oblasts. Harder still, is imagining the President --any president--choosing to make such amendments a top priority.

Moreover, what is true of the Presidency and the Verkhovna Rada is true beyond them. There is no discernable popular demand for the creation of self-governing oblasts, and their creation does not figure as a prominent element in the platform of any significant political party. Similarly, there is little reason to suppose that there will be much serious support for the creation of self-governing oblasts within the local government community itself.

To be sure, the National Association of Oblast and Rayon Councils will continue to push for amendments that would grant them their own executives. But the Association of Ukrainian Cities and the Association of Amalgamated Hromadas are likely to be indifferent to the proposition at best, and more likely hostile. So long the precise powers and finances of self-governing oblasts are unclear, hromada will prefer to deal with the state they know than with both the state and a new self-governing body above them. In short, beyond the Association of Oblast and Rayon Councils, nobody is really pushing for self-governing oblasts other than the reformers responsible for developing the 2014 'Concept of Territorial Reform' and their supporters within the EU.

But if the passage of the constitutional amendments necessary to create self-governing oblasts seems politically unlikely, the devastation wrought by the war has significantly complicated how one might reasonably think about the role self-governing oblasts should play once a stable peace has been secured. As we have seen, the governing assumption about self-governing oblasts has been that they would be assigned virtually all social sector responsibilities managed and financed by the LSAs, as well as responsibility for regional economic development.⁵³

Indeed, in many ways, the authors of the 'Concept' conceived of regional reform more in terms of cutting the Gordian Knot, than the messier business of parsing public service responsibilities between two different types of regional governments: LSAs would regulate, control, and oversee, while self-governing oblasts would manage economic development and deliver all regional public services. Moreover, the apparent simplicity of the division made it unnecessary to really analyze who might best do what or why, or how financial flows might have to be adjusted to fit the new model.

⁵³ It is worth adding that in the years in which the Bezsmertnyi Plan was evolving into the Concept of Territorial Reform, everybody was enamored with Poland's three level system of local self-government and in particular with the ability of its self-governing regions to rapidly and effectively absorb EU funds. As it turned out, Poland's success proved more the exception than the rule and in most of the new member states the planning and administration of EU funds has not been managed by regional self-governments but a complicated and varied mix of regional quangos and state institutions.

Less obviously, but equally importantly, the apparent simplicity of the division also made it unnecessary to think about the property rights of oblast councils: On the one hand, the LSAs –as regulatory institutions—would have little need to own anything other than the buildings in which they operated. On the other hand, none of the property that had been given to councils would have to be taken back by the state because once they had their own executive bodies, financial, managerial, and ownership rights would belong to Self-Governing Oblasts.

But the destruction of the war has radically complicated reformers' always oversimplified idea about how functions should be divided between LSAs and self-governing oblasts. Russia has relentlessly bombed Ukraine's energy sector, taking out power plants, substations, gas facilities, and transmission lines. It has also targeted transportation networks, blowing up bridges, railways, ports, and storage facilities in order to cripple exports, particularly those of agricultural goods. In short, Russia has gone after Ukraine's network infrastructure with a vengeance.

As a result, many of the most pressing post-war challenges will lie in rebuilding these networks in ways that facilitate European trade and integration. Indeed, so long as rebuilding the network infrastructure necessary for European integration sits atop Ukraine's list of national priorities there will be little meaningful distinction between regional economic development and national reconstruction. Under these circumstances, it is unlikely that the national government –any national government- will want to complicate the reconstruction process by giving newly created self-governing oblasts significant powers over regional economic development. Or put another way, reformers' idea that regional economic development is perhaps the single most important function that should be assigned to self-governing oblasts is no longer particularly useful.

Moreover, and for better and worse, the national government –with the full support of the World Bank and the IMF—is currently building a remarkably centralized system to take in, plan, allocate, administer, and account for reconstruction aid. Virtually all external support for recovery and reconstruction will flow through a single institution, the Ukraine Facility. According to the Ukraine Plan, 20 percent of the Facility's investment grants will be earmarked for hromada. But at least for the moment, this does not mean that investment projects have to be initiated or managed by hromada themselves. More importantly for our purposes here, none of the Facility's funds have been earmarked for oblasts, meaning that the national government, the World Bank and the IMF consider them to be state institutions.

Further, all investment grants as well as reporting on their execution will be electronically processed, monitored, and accounted for through the so-called 'Dream System'. In theory, this system should improve the selection and management of externally funded investments by requiring the standardization of both the documentation needed to apply for grants and the documentation needed to account for them. Indeed, the hope is that not only will it improve project selection, but that it will also make these decisions –and the monitoring of project finances and performance-- more transparent for both donors and general public.

Many operational details of the 'Dream System' are still being worked out. It remains unclear what criteria will be used to make investment decisions and if, when, and how these decisions will be subject to external review or public oversight. And to date, little thought seems to have been given to how such a centralized system can make effectively use of debt capital to both increase investment levels and strengthen project oversight.

But the point here is simply that nothing that neither the national government nor the international do not seem to self-governing oblasts as part of the process. In short, one of the main reasons to create self-governing oblasts seems to have been taken off the table for the foreseeable future, in part because the destruction of network infrastructure has blurred the distinction between national and regional priorities, and in part because the system that is being created to manage and account for external investment funds is –by design— extremely centralized.

That said, it is the human havoc wrought by the war --and not its physical destruction-- which is probably more important for thinking about post-war subnational governance. And here the conversation must start with veterans. With a stable peace, Ukraine will face the challenge of having to reintegrate between a quarter and a half a million veterans back into civilian life. Whether Ukraine can meet this challenge has huge implications for the future of its democracy.

At the moment, however, veterans' services are sorely underdeveloped. The Ministry of Veterans Affairs was only created in 2018, and it remains underfunded and understaffed. It has almost no institutional presence at the subnational level, and the vast majority of an insufficient and uneven range of veterans' services are provided by NGOs or private companies. Moreover, most are funded by domestic and external donors, not by the Ukrainian state.

Going forward, it is both likely and desirable that most veterans' services will continue to be provided by private organizations. Indeed, if the war has proved anything, it is that Ukrainian civil society is incredibly resourceful and resilient even as it remains deeply suspicious of its own state. But democracy in Ukraine will have a hard time surviving a half million angry veterans and there is a crying need to strengthen the state's capacity to support them, even if most of the actual services they receive will continue to come from private providers.

Developing this state capacity will require the construction of subnational institutions capable of contracting out services, monitoring performance, and strategically filling-in gaps when private providers are unable or unwilling to do so on their own. At a minimum, the national government will need to better understand which services are most important; what modes of delivery are most effective; and where different services are best located to improve both access and quality. Developing the capacity to effectively support a network of publicly funded, privately provided veterans services will require significant investment, experimentation, and coordination at multiple levels of the polity.

All of which is to say that for the foreseeable future it is unclear exactly where the necessary investment in state capacity should be located. Eventually, much of this capacity will probably congeal in and around big cities that have the revenues, assets, and expertise necessary to increase the quality of, and access to networks of publicly and privately provided social services. But assigning responsibility for developing veterans' services to newly formed self-governing oblasts would be incredibly risky and imprudent for a national government that has neither the money nor the knowledge to specify what services self-governing oblasts should provide or contract out.

As a result, developing the capacity to finance, coordinate, and monitor the private provision of veterans' services will need to be led by the national government with much of the experimentation in the field entrusted to LSAs. And this in turn suggests that the vision of LSAs as purely regulatory bodies --as prefects stripped of service responsibilities--is unworkable once the importance of improving veterans' services is recognized.

Finally, and most perhaps most disturbingly, Ukraine does not have the people necessary to both build new state capacity at the oblast level and to construct de novo new executive authorities for self-governing oblasts. Even before the full-scale invasion began, there were significant difficulties in finding qualified personnel for public sector jobs. Since the full-scale invasion began, an estimated 3.7 million people have left Ukraine, half a million soldiers have been killed or seriously injured in battle and another 40,000 civilians have been murdered. Even if many Ukrainians return home, it will be hard to fill government jobs with trained personnel for years to come, and harder still to retain them unless salaries can be increased.

Ukraine, in other words needs a compact and efficient state, and it does not have the people, money or time to create self-governing oblasts. And even if it did, it would still have little idea about which functions self-governing oblasts should perform, which should be left to LSAs, and which might best be shifted from the LSAs to hromada.

Ukraine has been unable to do this for years and the war has now made the problem much more complicated. In short, everybody will be better off if the idea of creating self-governing oblasts was simply put to rest until Ukraine is actually a member of the European Union.

2. What is to be done? Oblasts

To date, Ukrainian local government reformers and their supporters in the EU have sought to amend the Constitution in order to give oblast council their own executive authorities. If this can be done, the argument goes, then role of the national government and the role of local self-governments can be clarified at the regional level. On the one hand, oblast LSAs can be relieved of all responsibilities of providing public services and instead be transformed into prefects whose primary function would be to oversee the legality of the decisions of the self-governments below them. On the other hand, newly established oblast self-governments would now have the executive bodies to necessary to plan and implement their own policies as well as to use their property rights in ways aligned with their broader policy objectives.

This vision of cleanly separating national government responsibilities from local self-government responsibilities at the regional level is dependent on getting the national government out of the business of providing public services as well as on making newly created oblast self-governments responsible for much of the heavy lifting associated with regional economic planning and development.

For the reasons discussed above, it seems politically unlikely that any post-war parliament will amend the constitution to allow for the creation of self-governing oblasts. At the same time, and at a minimum, the challenges of reconstruction and of developing veterans' services raise serious questions about the feasibility and wisdom of trying to radically roll back the power of the national government at the regional level during the post-war period.

So, the question is: What is to be done? And here, unfortunately, there are no easy answers. But if clearly separating national government responsibilities from local self-government responsibilities at the regional level has proved impossible to date, unlikely in the immediate future, and of dubious value in the face of Ukraine's post-war challenges then there seem to be only two possibilities.

The first is to postpone the question of serious regional reform to better times and in the interim hope that the exigencies of post-war reconstruction will push and pull the relationship between LSAs and regional councils towards a more functional equilibrium. That said, it is very hard to see how a better equilibrium can emerge within the current constitutional constraints. Planning and implementing coherent reconstruction efforts will be difficult if the President can effectively change these plans at every step along the way by firing the heads of LSAs.

Similarly, developing and implementing such plans will be difficult if regional councils can use their property rights to block or the bend planning process towards one or another set of particular interests, or if the real ownership of communal assets is not more clearly specified between levels of government. And it will be hard to build regional state capacity if it remains unclear whether the investment in this capacity is being made to strengthen the national government's ability to realize its policies at the subnational level, or to strengthen the powers of regional councils.

The second possibility is more radical. It entails amending the Constitution in ways that clearly make oblasts territorial arms of the national government. At a minimum, this would require radically reducing or fully eliminating the Office of the Presidency's control over oblast heads, defining them as professional civil servants, and placing responsibility for their hiring and firing in the hands of Cabinet of Ministers.

It would also require redefining –if not necessarily eliminating-- the role of democratically elected councils at the regional level. How this might be done would require a careful assessment of the way in which the current powers constrain state overreach, facilitate better decision making, and/or serve to block the effective implementation of national policy at the subnational level.

But two general lines of development can probably be outlined. The first is that instead of being theoretically responsible for decisions that they do not have the bureaucratic capacity to either plan or implement, the role of the councils should be limited to monitoring and evaluating the decisions of the LSAs, and to providing non-binding –but publicly required—advice on how subnational state policy can be improved. In particular, the councils –either as popularly elected officials or perhaps as bodies composed of municipal representatives, should have well defined powers to review regional investment plans and to monitor and evaluate their execution.

The second and more difficult aspect of reforming the role of the oblast councils concerns their powers over the disposition of communally owned assets, including the right to hire and fire the managers of communally owned institutions. These powers are particularly confused at the oblast level because as we have discussed earlier, according to Article 142 of the Constitution all subnational communal property is really owned by hromada, making it unclear whether oblast councils manage the property they control in their own names or in the name of hromada councils.

But the point here is that it is very hard to imagine how regional development and investment strategies can be effectively realized if national government is responsible for planning and financing these investments, but oblast councils control the disposition of the assets that are being invested in. Or to put the matter, more bluntly it is hard to see how Ukraine can effectively plan, manage, and utilize investment funds at the regional level if the right to dispose of assets currently in the control of oblast councils are not renationalized.

But if amending the Constitution to create self-governing oblasts seems both unlikely and undesirable in the immediate postwar period, this does not mean the Ukraine can avoid constitutional reform. But the necessary amendments are not about giving councils their own executive bodies. They are about making sure that whatever governing institutions Ukraine chooses to create at the regional level operate outside of the direct control of the presidency and have clear legal identities and clear property rights. In sum, the argument is that as difficult as it will be, the most viable direction for reform requires clearly defining oblasts as state institutions, transforming oblast councils into advisory bodies, and renationalizing the assets that are said to belong to hromada, and which are currently controlled by oblast councils.

3. What is to be Done? Hromada

We have argued above that national government needs to strengthen its regional institutions in order to a) rapidly and effectively use external support for recovery and reconstruction b) finance, develop, and coordinate the provision of veterans' services and c) oversee the legality of hromada decisions. And we have suggested, doing this requires constitutional amendments that constrain the Presidents subnational appoint powers and which reconfigure the powers of oblast councils, most importantly their legally confused rights to dispose of communal assets.

The proposal to strengthen state institutions at the regional level however does not mean that Ukraine does not need to strengthen its local governments. On the contrary, Ukraine needs strong and capable municipalities if it is to successfully attract its citizens home and to engage their energy, resilience and creativity in the democratic reconstruction of the country. And here we think that the most important reforms concern overcoming the separation of financial and managerial powers from property rights that result from hromadas' lack of legal personality.

Here, the argument has been made that there is no problem with the separation of financial and managerial powers from property rights at the municipal level and by extension hromadas' lack of legal personhood, because mayors chair their councils, in effect unifying the governance structures of hromada.⁵⁴

⁵⁴ See Center of Expertise for Good Governance, op. cit. pp 12-16

And there is some truth to this argument. But only in as much as lawyers and municipal officials have developed legal workarounds to ensure that contracts entered into by the executive are legally binding for their councils, and decisions of the councils concerning the disposition and management of municipal property are legally binding for 'their' executives.

Unfortunately, we are not familiar with the nature of these legal workarounds. That said it is hard to imagine that they don't create all sorts of headaches for third parties because –lacking legal personhood—there can be no contracts with hromadas themselves. But even if these workarounds are reasonably secure, there are many reasons why thinking about what needs to be done at the municipal level should begin with legal personhood.

The most important reason is without legal personhood all discussions of the rights and obligations of hromada must be regressed backward into their component parts. The clearest example of this problem is the so-called Law on Local Self-Governments. We say 'so-called' because the subject of the law is not and cannot be local governments because no such entities exist. Indeed, the law would better be called the "Law on the Decision-Making Powers of State and Local Bodies of Territorial Administrations" because what the law tries to do is to define for each and every area of public policy, and at each and every level of territorial administration-- the respective decision-making powers of 'bodies of state (sic) executive power' and 'bodies of local self-government'.

As result, every question about what hromadas can and cannot do has to be decomposed into what the law empowers their respective parts to do. This is cumbersome and confusing at best. At worst, it makes it extremely difficult for anybody to assess whether hromada have actually done what they are supposed to do –or are at fault for something they have done--because any such assessment requires determining not whether a single actor has behaved appropriately, but whether each of its composite legal entities have acted in accordance with their respective powers, and if not, who is at fault.

Indeed, the accountability problems generated by hromada's lack of legal personhood have led the Ministry of Finance to require them to create separate legal entities to manage their finances.⁵⁵ But the problems caused by the absence of legal personhood cannot be resolved by requiring what should be one legal entity to become many. On the contrary, it will complicate all efforts to oversee the legality of 'hromada' decisions because the agency or agencies of the national government entrusted with the task will have to review the decisions of multiple 'bodies of local self-government', meaning those of the council, those of the executive, and those of the many other legal entities they are currently creating.⁵⁶

All of this is further complicated by the fact that democratically elected mayors remain agents of the national government with respect to delegated functions. As a result, they can be taken to task by the national government for their social sector policies because all social sector functions are currently considered delegated functions. Moreover, fears about being held liable for such decisions seem to be prompting mayors to transform internal departments of City Hall –like education or social welfare— into separate legal entities. As such, not only does Ukraine not have local self-governments, but the current system is encouraging the proliferation of new entities whose relationships to each other and whose respective powers and responsibilities are increasingly hard to untangle.

How much can be done to strengthen hromada without addressing the problem of legal personhood head on is an open question.

⁵⁵ "On Amendments to the Budget Code of Ukraine, No. 907-1X 17.09.2020 : <https://hromady.org/wp-content/uploads/2020/12/Мінфін-МФО.pdf>

⁵⁶ We are not referring here to the recent law that gives LSAs the powers to review the decisions of the executive bodies of hromada with respect to delegated functions. This law was passed in an attempt to satisfy indicator 9.1 and in fact only reaffirmed powers that the LSAs already have. Nor are we referring to the Ministry of Finance's power to control the way hromadas do their accounting or make financial transactions, powers it already has and which it has attempted to strengthen by requiring that financial departments be transformed into legal entities. Instead, we are referring to the legality of both the procedures and substance of more general decisions concerning the formation and execution of budgets, the disposition of assets, and (ironically) the creation and construction of new legal entities.

o be sure, the Budget Code could be amended to improve the allocation of the personal income tax (PIT) and the equalization system. Currently, 64% of the tax is allocated to hromadas by firms on the basis of where firms have registered their business units. As a result, an estimated 25% of the tax is allocated to jurisdictions in which taxpayers work but do not live, meaning mostly to larger, more urban hromada like Kyiv and the former COS and at the expense of the newly amalgamated communities. Indeed, until the allocation of PIT –by far the largest single revenue of all hromada-- is put on a residency basis all efforts to improve the equalization system will essentially be chasing the inequities generated by the current system.

Equally importantly, allocating PIT by place of work breaks the linkage between taxpayment and voting that is necessary to encourage citizen engagement with their local governments: People will take elections and the performance of their local officials more seriously if they know that whatever they are doing is being done with their money. And fostering the linkage between place, tax payment and politics is particularly important in Ukraine given the need to attract refugees back to the country and to bind IDPs to new homes.

That said, allocating PIT by place of residence cannot be done overnight. The national government –and more particularly the Ministry of Finance—have to develop the IT systems necessary to link peoples' PIT payments to their actually place of residency, and thus to stop relying on firms to send the PIT shares of their employees to the hromada in which they work. Steps would also have to be taken to ensure that people register where they actually live, steps that will almost certainly require tightening up the rules concerning rental apartments.⁵⁷

None of this is rocket science. But at the same time, it is not obvious that such a major reform can or should be pursued in the middle of an existential war. On the contrary, there are good arguments for postponing such an effort until a stable peace has been achieved. Only then will people really return home and only then will the national government have the bandwidth to seriously address the components of a reform that is critical not just for improving municipal finances but for fostering democratic accountability.⁵⁸

Similarly, efforts could be made to clarify which hromada responsibilities are own functions and which are delegated ones. Indeed, it might be possible to draft a self-standing “Law on Hromada” whose provisions supersede those of the existing Law on Local Self-Governments (and other legislation) wherever hromada are mentioned. This Law could better specify which functions hromada perform in their own name and which remain delegated. It could more clearly define the revenue structure of local governments, from the grants and transfers they receive, to their own revenues and their right to incur debt. And most importantly, and at least according to some legal experts, it might be able to endow hromada with legal personhood without actually having to amend the constitution. If so, this would go a very long way towards putting municipal governance in Ukraine on a sound legal footing even if left determining what oblasts and rayons should be to the constitutional moment that will inevitably follow the heels of any stable peace.

But the plea here, is that in thinking about this constitutional moment, Ukrainian state builders put aside their vision of Ukraine as a unitary state with multiple levels of local self-government. Instead, the focus should be on transforming oblasts into effective agents of national government policy by reconfiguring the role of their councils while getting the presidency out of their day-to-day affairs. And on endowing hromada with legal personhood and passing legislation that better defines their rights, responsibilities, and revenues as Ukraine's sole level of local self-government.

⁵⁷ On PIT reform see footnotes 35 & 36.

⁵⁸ It is important to add here that the Ministry of Finance has been noticeably absent from most strategic discussions of subnational governance reform in Ukraine. This is understandable in the middle of an existential war. But it will have to change in the future if any coherent transformation of the country's system of subnational governance is to be developed.

APPENDIX 1

MAP OF CONSTITUTIONAL CONFUSIONS CONCERNING LEVELS OF GOVERNMENT, BODIES OF GOVERNMENT AND PROPERTY RIGHTS

OBLAST	Executive Body of State Power / LSA	Body of Local Self-Government (council)
NO LEGAL PERSONHOOD - No clear definition of what it is - In theory/practice an arm of the national government - In theory/less in practice an agent of local self-government. - But unclear whether as a collection of hromada or as the residents of the oblast	LEGAL PERSONHOOD - Appointed by the President/CabMin - Implements state policy - Delivers Social Sector Services - Allocates grants to lower levels - Owns/manages state property - Implements decisions of council in matters of regional/local concern, sometimes through legal entities created by the council - Oversees the implementation of delegated powers by lower levels	LEGAL PERSONHOOD - Democratically elected - Determines policy in matters of local concern at regional level - Delegates its powers in matters of regional/local concern to the LSAs for execution Manages property owned by hromada - Creates legal entities through which LSAs implement local policy
HROMADA	Executive Organ	Body of Local Self-Government (council)
NO LEGAL PERSONHOOD - Defined as residents of given jurisdiction who bear the 'right' to local self-government - Said to own all subnational property used for communal purposes	CAN or CANNOT have LEGAL PERSONHOOD(S) - Democratically elected - Implements the policies of the Council, but through legal entities set up by the council - Delivers social sector services - Responsible to the national government for the implementation of delegated powers	LEGAL PERSONHOOD - Democratically elected - Determines policy in matter of local concern at regional level Manages property owned by hromada - Creates legal entities through which it and its executive organs implement local policy

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