

Local self-government: fifth wheel in the wagon of central power

During the Soviet rule, people perceived the state as an apparatus of total power that governed the society on all levels, from top to bottom. There was no space for an independent, separate from the state, form of public power in the form of local self-government. That vision was shared by the common people and by the ruling elite. After the Soviet Union had collapsed, many officials continued to believe that local self-government was an unnecessary institution and that national authorities should continue deciding on all social and economic issues at all levels.

At the very end of the Soviet era, on 20 February 1991, a Law “On Basics of Local Self-Government and Local Economic Management in BSSR” was adopted by the Supreme Council that created the right pre-conditions for local self-government. However, by the beginning of 1995 the central authorities had destroyed the first sprouts of self-government by introducing a “vertical” of administrative-executive bodies that took control over local Councils of Deputies, thus returning to the old Soviet model.

This article provides an insight into the policies of the state on local self-government in Belarus starting from the end of the 1990s, with a particular focus on the reaction to these policies from the side of non-governmental organisations (further referred to as NGOs). This topic is still quite understudied, and we hope to shed more light on it.

Legislative practice: local self-government as a continuation of an authoritarian state

The amended Law “On Local Government and Self-Government in the Republic of Belarus” entered into force on 10 January 2000. This amendment summed up all centralisation measures that the State undertook starting from 1991. The Same year, president Alyaksandr Lukashenka initiated the Congress of Councils of Deputies of the Republic of Belarus that took place on 20 September 2009 (referred as Congress further on).

Before the Congress, experts prepared at least five projects for the reform of local government and self-government in Belarus. The Administration of the President prepared one of them while the Institute of Economy at the National Academy of Sciences

prepared the second project. Two more projects were drafted by the Economy Research Institute of the Ministry of Economy by Anatoly Bahdankevich and Marharyta Yahorava. Finally, there was the fifth project prepared by Vasil Shynkarou, who at that time worked in the Presidential Administration. It 's hard to assess the impact of those projects on the script of the Congress, but probably it was minimal.

At the Congress, the President informed delegates that he had assigned the government with the task of preparing an Edict on “Measures to Increase the Role of the Local Government and Self-Government in Tackling Economic and Social Issues¹. The Speaker of the House of Representatives Anatoly Malofeyev called delegates to “develop the concept of the work of local self-government and a clear mechanism for the coordination of activities between the Councils and executive power.”²

Some speakers suggested the adoption of a long-term National Programme of state support to the local self-government, to create a single national organism that would coordinate activities of the Councils of Deputies and regional administration branches, as well as to develop the Local Self-Government Code. The Congress adopted a Declaration and a Resolution.³

After the Congress, on 11 December 2000, the president signed the Instruction No 412rp that introduced Measures on the implementation of decisions of the Congress of Councils of Deputies. Point 37 of these Measures obliged the House of Representatives and the Council of the Republic together with the National Centre for Legislation and Legal Research to develop and introduce to the House of Representatives, up to the end of 2002, the draft Code of the Republic of Belarus on Local Government and Self-Government.

The real work on that document started only in October 2001, after the presidential election that took place on 9 September 2001. Belarusian members of parliament were supposed to participate in that work. For example, paragraph 6 of the Work Plan that was established by the Resolution Nr 9 of the Presidium of the Council of the Republic of Belarus dated 12.01.2001 envisaged that, in 2001 the draft would be developed in cooperation with the Permanent Commission of the House of Representatives of the National Assembly in charge of government-sponsored construction, local government and rules of procedure, and presented to the President for review.

In January 2002, the then Speaker of the Council of the Republic of Belarus, Alyaksandr Vaitovich, gave an interview to the local press about the results of the five years of activity of the Council of the Republic of Belarus. He said that the Council together with the National Centre for Legislation and Legal Research wrote the draft of the Concept of Local Self-Government and that this document was delivered to the Administration

¹ See: *Sovetskaya Belorussiya*. 30 September 2000. However, the Decree was never signed.

² See: *Vecherniy Minsk*. 03 October 2000.

³ See: *Respublika*. 30 September 2000.

of the President in late December 2001. After the document had been discussed by all interested parties and all the corrections introduced, the Concept was supposed to land on the table of the president. Vaitovich claimed that due to its “young age” the Council of the Republic of Belarus paid too little attention to local self-government; one of the reasons for that in, his view, was that there was no institution inside the parliament that “could gather expertise from the work of local authorities and develop suggestions for improvement of this work.”⁴

Although the draft Concept had already been presented to the Administration of the President, it continued to be rewritten in 2002. For example, on 22–23 January 2002, the Commission of the House of Representatives of the National Assembly in charge of government-sponsored construction, local government and rules of procedure, chaired by Mikhail Sasonka, held an extended meeting. All presidents of regional (oblast) Councils of Deputies, as well as Minsk City Council of Deputies, were present at the meeting; as well as representatives of the Council of the Republic of Belarus, the Chief State Legislative Department of the Academy of the President, the National Centre of Legislation and Legal Research affiliated with the president, the Council of Ministers, the Ministry of Justice and the Presidential Academy of Management. Representatives of the Lev Sapieha Foundation Miraslau Kobasa and Alyaksandr Karamyshau spoke at that meeting, as well. In the late 2001 – early 2002 the parliamentary draft of the Concept was reviewed by the Economy Research Institute of the Ministry of Economy and at the Institute of Economy of the National Academy of Sciences (NAS) of the Republic of Belarus; both sent their amendments to the Administration of the President.

The parliamentary draft of the Concept did not have specific authors; it was discussed and corrected in various institutions simultaneously, and therefore was quite eclectic. Probably, that was the reason why president Lukashenka on the 18th November 2002 created a special expert group consisting of 25 members at the Institute of Economics of the National Academy of Sciences under the chairmanship of the President of the Academy Mikhail Myasnikovich. This group had to prepare one more draft of the Concept of Reform of Local Government and Self-Government in the Republic of Belarus. The real chairman of that group was the director of the Institute of Economy of the NAS Piotr Nikitsenka. The draft Concept was prepared by August 2003, signed by Mikhail Myasnikovich and sent to all interested parties, including the Lev Sapieha Foundation, with the suggestion to send any feedback to the Presidium of the NAS by 1 September 2003. According to Uladzimir Fatseyev the draft prepared by the NAS was more concise and better structured; that project offered a deeper insight into the methodology and

⁴ See: *Sovetskaya Belorussiya*, 16 January 2002.

proposed ways for the further development of reforming the system of local power in Belarus.⁵

Until 2003–04, the state allowed representatives of local executive authorities and so-called local self-government to participate in trips to other countries, including ones with the participation of NGOs. For instance, in February 2002, local authorities participated in the study visit to Sweden that took place in the framework of a Belarusian-Sweden project “Support to Democratisation and Local Self-Government in Belarus”. Out of 18 participants, 14 were presidents of regional (oblast) and District Councils of Deputies.⁶ In the following years, the participants of such projects were mostly members of the Councils of Deputies and rank-and-file local executive officials. The latter also withdrew from the participation in abroad study visits and also in in-country seminars on local self-government, as well. De facto it was an unspoken ban for participation in events that were organised by NGOs that were in opposition to the government.

The policy of donors who supported training and seminars, study visits and other events with the participation of local authorities, also changed. For example, in 2006–2011, 54 percent of all donor support to Belarus from EU members was disbursed via state institutions while only 13% was distributed via civil society organisations.⁷ As a result, events dedicated to local self-government were conducted by civil society activists and local authorities as parts of separate projects.

After the draft Concept prepared by the National Academy of Sciences in Belarus failed to be accepted by the government, the process of reform of self-government in Belarus stalled. The state did not want to proceed with any political reform, including local self-government reform that would redistribute power for the benefit of local Councils of Deputies among others. At the same time, Belarus entered a period of economic growth that continued until mid-2008 and created an illusion of effectiveness of local authorities.

After some time, the government has come up with the idea of creating a special structure that would represent the Council of the Republic within international structures and that would include not only members of the Council and its Secretariat but local deputies, as well. This idea got high-level support. Paragraph 5 of the Presidential Edict dated 12 January 2007 “On Increasing the Role of Local Government Institutions in Decision Making about Basic Public Needs of the Population” obliged the Council of the Republic to cooperate with local self-government bodies. On 2 April 2007 the Council of the Republic issued Resolution No 390-SR3/VII that declared the creation of the Council for Cooperation of Local Authorities. The Decision for the creation of the Council was

⁵ See: *Local Self-Government in Belarus // Mestnoye samoupravleniye v Belarusi* / V.N. Kivel (i dr) pod nauch red I.P. Sidorchuk – Minsk, Tonpik, 2007. P. 381.

⁶ See: Kobasa M.V. *Study Visit to Sweden / Uchebnyi Vizit v Shvetsiiuyu // Vestnik Samoupravleniya*. 2002. P. 1.

⁷ See: <http://www.svaboda.org/content/article/26793761.html>. – Last accessed: 14 January 2015.

confirmed and delegates appointed. On 3 December 2008 the Standing Committee of the Congress of Local and Regional Authorities at the Council of Europe decided to give the Belarusian Council, based on its request, observers' status.⁸

Alyksandar Lukashenka's annual address to the nation and parliament on 23 May 2006 played a crucial role in understanding the government's approach to reform in local self-government. The president admitted that he was advised to axe or even dissolve the local Councils of Deputies. Even if he exaggerated, his words reflected quite well the moods and attitudes of the ruling circles to such institutions of power as the local Councils of Deputies. From the point of view of central authorities, those Councils were as needless as the fifth wheel on a wagon. Even the way Lukashenka defended the Councils was far from the standards and principles of the European Charter of Local Self-Government. He treated local Councils not as a separate institute of public authority but as a means to solve issues of "basic public needs of the population on local level."⁹

On 18 May 2006 the briefing "On Increasing the Role of Local Government and Self-Government Authorities of the Primary Level in Solving Issues of Basic Public Needs of the Population" took place at the presidential administration. At that meeting, it was decided to start drafting an amendment to the Law on Local Government and Self-Government.

Part 2 of paragraph 2 of the Protocol of Instructions of the President No 12 dated 17 July 2006, the National Centre of Legislation was assigned to develop draft amendments to the Law on Local Government and Self-Government. The Centre had to prepare the amendments based on the practice of application of legislation in local government and consult with the Council of Ministers, Council of the Republic, local Councils of Deputies and local executive committees.

By the beginning of 2008, the draft of Law on Local Government and Self-Government was ready.¹⁰ That bill contained 8 sections and 66 articles, and did not differ significantly from the law that was signed on 4 January 2010. The main difference was that the bill did not envisage giving Local Councils a right to create associations. That issue was only raised during the meeting of the Chairman of the Council of the Republic Barys Batura with president Lukashenka that took place on 10 March 2009.¹¹

On 10 April 2009 the new draft Law On Local Government and Self-Government was presented to the House of Representatives. On 11 June 2009 the bill passed on first reading, and on 11 December 2009 it passed on second reading. Members of parliament didn't debate the law, since, as the Chairman of the House of Representatives Uladzimir

⁸ See: <http://mfa.gov.by/multilateral/organization/list/a025a26a6670b494.html>. – Last accessed: 18 December 2014.

⁹ See: *Sovetskaya Belorussiya*, 24 May 2006.

¹⁰ See: <http://center.gov.by/article84.html>. Last accessed on 18 December 2014.

¹¹ See: Kobasa M.V. *Ob assotsiatsiyakh mestnykh samoupravleniy / On Associations of Local Self-Government // Vestnik Samoupravleniya*. 2011. No 2 (23). P. 3.

Andreichanka told the media, they didn't consider it a priority. He recalled about the bill only before the start of the autumn session of the House of Representatives when the draft was supposed to be considered in second reading. The Council of the Republic approved the bill on 17 December 2009. The President signed it into law on 4 January 2010.

Since the Law on Local Government and Self-Government was signed, it has been amended five times, but none of the amendments was significant. Currently, the law is applied as amended on 4 January 2014.

The government has never started the real reform of local self-government. Local self-government for them is an impersonal form of “organisation of activities of people living in a given territory” rather than the right and real competencies of the territorial community of citizens to solve important local issues within the law, under their own responsibility and in their own interests.

Local self-governing bodies have not transformed into an independent form of public authority; they continue being part of the state machine, and its continuation at local level. That means that relations between different levels of Councils are built not on the division of spheres of competence but on the basis of the hierarchical structure that is natural for the executive authorities. The government never dared to conduct the reform of the administrative and territorial division of Belarus that would allow the adoption of a two-tier approach instead of a three-tier, while the process of the liquidation of village councils is chaotically ongoing anyway.

While reading the law, the order of articles on local self-governing and governing is quite striking. The earlier version of the Law presented the local self-governing bodies in first place, i.e. executive councils, and only then – Councils of Deputies. The new law presents Councils of Deputies first, followed by executive councils.

The biggest innovation of the Law, that was adopted due to the appeals and demands of civil society, is allowing local Councils to form associations. However, this right, mentioned in Article 7 of the Law, has never been used by any of Councils in the last five years.

The new Law on Local Government and Self-Government was adopted in the favourable atmosphere of political liberalisation and the improvement of relations with the West (2009–2010). After the presidential election on 19 December 2010, the government lost interest in the issue of local self-government. It is unlikely to change its attitude before the presidential election in 2015.

Useless partners: civil society and local authorities

Many NGOs strive to become partners of local authorities in decision-making and implementation, as well as the evaluation of their activities. However, the state is not interested in real cooperation, even in the sphere of public procurement of services. The

government prefers to solve local problems exclusively via executive councils, which, instead of being the executive branch of local Councils of Deputies, serve the function of the vertical hierarchical power.

Several NGOs demand the reform of local self-government: the Lev Sapieha Foundation (that became an observer at the Congress of Local and Regional Authorities of the Council of Europe in 2001), Our House Civic Campaign, Public Association “Civic Initiatives” (its registration was cancelled in 2003 by the Supreme Court), Public Association “Ecohome”, BIPART, The School of Young Managers in Public Administration SYMPA and others.

In the summer of 2009, the Lev Sapieha Foundation prepared, and presented to the House of Representatives, numerous article-specific commentaries and notes to the bill On Local Government and Self-Government that was passed in the first reading. Unfortunately, most of them did not appear in the final text of the Law.

The Our House Civil Campaign focuses on informing citizens about the activities of local authorities in non-traditional ways: for example, with the help of comic pictures (Our House published their bulletin in this way in January 2012). It also organises action demanding local deputies to be responsible for their constituencies. For instance, in 2010, Our House launched the ongoing campaign “Make Deputies Accountable!” in order to force deputies of local Councils to meet their constituents regularly and report to them. Another noteworthy campaign is “Make Housing Authorities Accountable!” aimed at solving the housing problems of citizens.

Civil society has limited levers of influence on local authorities, even though legislation allows more than ten forms of participation of citizens in the realisation of public authorities at a local level. Let us review some of them, such as local Congress and public consultations.

Before the amended Law On National and Local Congresses was signed on 4 November 2013 (the law itself was signed on 12 July 2000), civil society activists used to conduct local congresses in the open air, discussing relevant local problems. For instance, in October 2011 activists Viktor Ivashkevich and Henadz Fiadynich organised a national action “Narodny Skhod” (People’s Congress), attempting to conduct congresses in 24 cities simultaneously. The legislation at that time applied the principle of declaration in the organisation of such congresses, therefore local authorities did not have legal grounds for banning them. However, after the campaign was over, a new text was introduced to the amended version of the Law prescribing that all open air events should be governed by the Law on Mass Gatherings. Since then, local congresses can take place only in closed premises. The procedure for a local congress has become more complicated: now, one needs to get a permit from authorities to organise such a congress, which means that even if all formalities are in place the local authorities may ban the meeting. Moreover, decisions on a provincial congress, no matter who initiates

it, (local authorities or a group of citizens) are not obligatory for executive councils or the population.

Recently, citizens have become more active in public consultations. Upto 1 April 2014, civil society activists had a chance to discuss issues of planning and construction works without the necessity to call a local congress. According to paragraph 3 of Article 4 of the Law On, Architectural, Urban Planning and Building Activity in the Republic of Belarus (amended on 4 January 2014), local executive authorities were responsible for that. Even though the opinions that were voiced during the meeting were not necessarily taken into account, those consultations gave civil society activists an opportunity to talk to the local population and look for socially active people. Those consultations were a good school of civic education for the population. In order to decrease civic activeness of citizens the Council of Ministers on 10 February 2014 adopted a new Resolution On Order of Public Consultations on Architectural, Urban Planning and Building Activity, which de facto reduced to zero the right of citizens to discuss urban planning at local congresses.

According to paragraph 4 of that Resolutions, public consultations can take only two forms: 1) informing physical and legal persons, and analysis of public opinion; 2) work of the public consultations commission.¹² According to provision 6 of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters¹³ and paragraph 19 of the Council of Ministers' Resolution On the Order of Evaluation of the Impact on the Environment (amended on 13 October 2011),¹⁴ local executive authorities are obliged to call local congresses of citizens only to discuss construction projects that are potentially most dangerous for the environment and for public health.

Conclusions

The reform of local self-government will take place despite all the delays imposed by the authorities. Local self-government is more efficient in solving issues on local level than central authorities, just the way private businessmen are more competent managers than

¹² Resolution of the Council of Ministers No 109 On Order of Public Consultations on Architectural, Urban Planning and Building Activity (10 February 2014) // Electronic database Consultant Plus: Belarus. Tekhnologiya 3000 / Yurspektr, National Centre of Legal Information. Belarus. Minsk, 2015.

¹³ Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Enviromental Matters [Electronic version]. 2005. See: <http://www.minpriroda.gov.by/ru/konvencia-ru/#131>. Accessed on 14 January 2015.

¹⁴ Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Enviromental Matters [Electronic version]. 2005. See: <http://www.minpriroda.gov.by/ru/konvencia-ru/#131>. Accessed on 14 January 2015.

Local self-government: fifth wheel in the wagon of central power

directors of state enterprises. Otherwise, European countries would not leave aside the state model of local self-government.

Unfortunately, politicians who control favour vertical hierarchy as an effective means of the preservation of the status quo and the instrument of achieving good results during elections. Even the brief period of political liberalisation (2009–10) did not bring any progress in the reform of local self-government. The amended Law on Local Government and Self-Government, as the one before it, did not question the idea of centralisation of power in the hands of the state. The government never dared to sign the European Charter on Local Self-Government or create the association of local Councils.

One should not expect the reform of local self-government before regime change. Primary figures in the state will continue talking about the necessity of strengthening the authority of local authorities, will accept foreign guests, and make promises. However, they will not introduce any serious institutional changes in the sphere of public authority.