

Local government

by Andrei Zavadski and Miraslau Kobasa

The system of self-governance in Belarus should take into account the national historic experience of our people and meet the criteria of the European Charter of Local Government.

The model suggests the division of public power into State authorities that include the parliament, president, government (cabinet), courts and their structural and functional divisions, and local government authorities, independent of central or State authorities. A clear division must be drawn between the powers and functions of the central and local governments.

The model suggests two levels of local government with prescribed functions and powers.

The model suggests that the central government set up local branches with responsibilities that do not duplicate, undermine or limit powers of self-governance at the local level.

Territorial structure of local self-governance

The basic level of local self-governance²⁸ is an authority representing a community living in one or several villages, or a small town or a city borough.

This local-level authority should be called *pavet*. Belarus should have between 220 and 250 locality-specific bodies of self-governance.

Local governments should be formed according to the following principles. Central towns or villages should have just one local government authority to handle affairs of the central town or village and the area within their jurisdiction.

In cities of over 100,000, local councils or people may use a referendum to form additional local government agencies called *hramada* in certain boroughs. *Hramadas* should have the same powers and responsibilities as *pavets*.

²⁸ Hereinafter referred to as 'local government' for the sake of simplicity (ed.).

The second, regional level authority should regulate and manage public affairs of an area comprising several *pavets*, and in the capital city of Minsk. Minsk should have both regional and local level authorities.

A regional authority should be called *zyamlya*. Belarus should have 8 or 9 such regional authorities.

However the geographic areas of local and regional authorities may overlap, they should be independent in exercising their powers.

Boundaries of local authorities' jurisdiction should not be changed without prior consultation of the local communities concerned, by referendum.

Rules and ways of exercising local government

Citizens should exercise their right to local government through referenda, assemblies and other forms of direct participation in public affairs, such as public authorities of local government (councils and committees of *mikrorayons*, borough, house, street, block, village and other authorities, including those represented by one person) and elected councils. Council members should be freely elected in secret ballot on the basis of direct, equal and universal suffrage. Belarus should use a mixed voting system in local elections. Local councils should be elected for a four-year term. After local government reform, the first two types of councils should be elected for a two-year term each.

Scope of local government

Local authorities of all levels should have representative and administrative bodies of the same structure and with same functions. The competence of local authorities should depend on the level of local government.

The principle of subsidiarity should govern vesting local authorities with powers and functions, which implies that local-level authorities will exercise more powers as close to the people as possible.

Powers given to local authorities should normally be full and exclusive. They may not be undermined or limited by another authority, central or regional, except as provided for by the law.

The scope of local authorities may include prescribed powers, powers accepted voluntarily and those delegated by another authority.

Local authority leadership

The head of a local authority should act as the head of both local representative and executive authorities. The head of a local authority and its members should be elected in secret ballot on the basis of direct, equal, universal suffrage.

Any functions and activities deemed incompatible with the exercise of a local elective office, or conditions for early replacement or reelection of the head should be set out by the law.

The term of office of the head of a local authority should be limited to 4 years. Since the beginning of local government reform, heads of the first two types of councils should be elected for two years.

The head of a *pavet*, a local level authority, should be called *burmistr*. The head of a *zyamlya*, a regional level authority, should be called *zemski halava*. The head of a *hramada*, an additional type of authority, should be called *starasta*.

Funding local authorities

In line with the principle of subsidiarity, priority should be given to the local level authorities. Local authorities' financial resources should be commensurate with their responsibilities.

A designated portion of national and local taxes, charges and duties should be allocated to local authorities directly and may not be de-committed for the sake of other budgets. Local authorities' financial resources may not be de-committed by order of other local or central authorities.

Protection of financially weaker local authorities calls for putting financial balancing procedures or equivalent measures in place, designed to make up for the effects of unequal distribution of potential sources of finance and the financial burden they must support. Such procedures or measures should not diminish the discretion that local authorities may exercise within their own remit.

Local authorities should be entitled to State budget allocations and should have access to local and national capital markets.

Powers delegated to local authorities should be matched by funds allocated for exercising these powers.

Municipal services

Local government should be exercised by local elected representatives and recruited officers. The latter may not hold office in central government agencies.

The legal status of local elected representatives and officers should provide for free exercise of their functions. Their legal status should allow for appropriate financial compensation of expenses incurred in their exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for the work done and corresponding social welfare protection.

The exercise of office by officers and local government authorities (both representative and administrative) should be open and transparent, as required by law. All documents passed by local authorities, if unprotected by confidentiality and privacy laws, should be subject to disclosure.

Local authorities' right to associate

In exercising their powers, local authorities should be entitled to cooperate and to form consortia with other local authorities within the legal framework available in order to carry out tasks of common interest. Under such conditions as may be provided for by the law, local authorities should be entitled to cooperate with their counterparts in other countries.

Local authorities at every level may associate. Associations may focus on local, economic, demographic, landscape and other factors. All associations should be affiliated with the Union of Associations of Local Authorities that should represent local authorities on the international scene, in particular in the Council of Europe's Congress of Local and Regional Authorities of Europe.

Central government agencies should not make decisions on matters concerning the activity, rights and powers of local authorities without prior consultation with the Union of Associations of Local Authorities.

State administration at local level

To exercise their powers at local and regional level, central executive authorities may set up local branches and supervise their activity. The activity of central government's local and regional branches should be financed by central government.

The central government may delegate functions of its local and regional branches to the local or regional level of government authorities. Central government may delegate all functions and powers to the local (base) level, while the regional level may be vested with all functions and powers except public safety and security, various inspection agencies and the right to represent central government.

Central government's local branches should not belong to the system of local governance and should not exercise responsibilities of local authorities. Employees of central government's local branches should have the status of state employees.

The exercise of office by officers and agencies representing central government should be open and transparent, as required by law. All documents passed by local authorities, if otherwise not subject to confidentiality or privacy laws, should be made public.

Administrative supervision of local authorities

Administrative supervision of the authorities should be exercised by local branches of central government. Administrative supervision may only be exercised according to designated procedures and in cases provided for by the constitution. Any administrative supervision of activities of local authorities should aim only at ensuring compliance with the law and constitutional principles. For the sake of expediency, however, it may be exercised by higher level authorities in tasks the execution of which is delegated to local authorities.

Should an activity of a local authority be deemed to breach the law, or in the event of dispute between the supervisory and supervised authority, the supervisory authority should appeal to courts to pass a ruling on the supervised local authority.

Administrative supervision of local authorities should be exercised in such a way as to ensure that the controlling authority's intervention is commensurate with the materiality of interests which it intended to protect.

Legal protection of local government

Pavets and *zemlyas* should have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local government as are enshrined in the Constitution or national legislation.

Administrative courts should be established to arbitrate disputes concerning the activity of local authorities and local representatives of central government. Administrative courts should arbitrate disputes between local authorities and the State, among local authorities, between local authorities and citizens, and between citizens and the State. The administrative court system should comprise the Supreme Administrative Court and four or five regional administrative courts.

Property claims involving a local authority and the State, or made between local authorities should be heard by commercial courts which should be arranged into a system similar to that of administrative courts.

Application of the ideal model to the legislative

by Viktor Charnau and Mikhail Pastukhou

A unicameral parliament (Sojm) would be the optimal legislature model for Belarus, a small country with a relatively homogenous population. The parliament should have 260 seats (as stipulated by the 1994 Constitution) taken in function