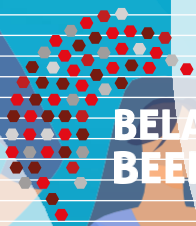


# THE LOCAL SELF-GOVERNMENT CONCEPT FOR A NEW BELARUS



BELARUS  
BEEHIVE

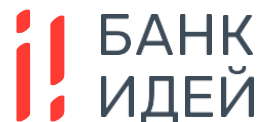
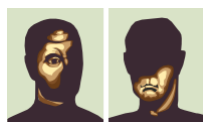


БАНК  
ИДЕЙ



THE RESEARCH HAS BEEN DRAFTED WITHIN THE FRAMEWORK OF THE *BELARUS BEEHIVE* PROJECT. THE PROJECT'S RESEARCH AND EXPERTISE COMPONENTS HAVE BEEN COORDINATED BY THE *POLITICAL SPHERE* INSTITUTE.

# The Local Self-Government Concept for a New Belarus



The research has been drafted within the framework of the *Belarus Beehive* Project; and the Project's research and expertise components have been coordinated by the *Political Sphere* Institute.

The research hubs engaged in implementing the Project's research component are the *New Ideas Centre*, *Belarusian Institute of Strategic Research*, *Centre for European Transformation*, *BEROC Research Centre*, *Our Opinion* Analytical Project, *CASE-Belarus Research Centre* and *SYMPA*.

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## Preface

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The local self-government represents a vital people power form, which directly expresses the will of the people and accounts for a foundation of a the constitutionally established state order in a democratic country.

Being a public authority, the local self-government, both in terms of its nature and essence, serves in equal measure as a form of citizens' self-management. It is a powerful catalyst that drives on the civil society functions. A commitment-minded public involvement in pasting some dignified living conditions on a certain territory promotes the public developing their sense of responsibility for addressing the local issues, thus upgrading the rate of their social and civic engagement. Besides, an advanced local self-government form fosters a well-balanced correlation between the state and a citizen. It is an institution of the modern state, which is used as a modality by the citizens/local public to solve within the legal framework, independently and at their own responsibility, a substantial part of the local significance issues.

However, the lack of a unified theoretical approach to the local self-government nature gives rise to its organisational contradictions and affects adversely the relationships with the national government bodies.

The objective difficulty related to addressing the issue of the local self-governments' independence and self-sufficiency implies that the state, while sharing its powers, reserves to itself the legal regulation and supervision of the local self-government activities.

The problem of interrelations between the central and local authorities has not been resolved up to now in many of the world's countries, which pressures the researchers, politicians and empiric employees to look on for the ways to address it.

Belarus has done its share of relevant work, too. Both formal teams and informal ones have developed about a dozen visionary proposals as to the local self-government reforms in Belarus. Disturbingly, none of the proposals has lived up to any research- or practice-related development.

It is our hope that the concept has a great potential, since Belarus today is at the doorway of changes.

The authors hereof have seen their role in proposing some reform ideas to attract the attention of the local communities, experts or politicians. The ideas in question have to be discussed, coordinated, fine-tuned and brought through to the public at large that is still to be convinced as to their usefulness and efficiency! Moreover, if the changes are what we want and expect, we should be ready to embrace them.

The authors, likewise, express their hope that the paper will provide a basis for some subsequent discussions among the expert and civic communities and allow articulating critical and constructive remarks, thus enabling a quality upgrade in the reform concept or implementation mechanisms.

*The Authors*

## Glossary

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**A&TU** means an administrative and territorial unit.

**Administrative and territorial structure of the Republic of Belarus** (referred to hereinafter as “the administrative and territorial structure”) as a unitarian state means a division of the Republic of Belarus’ territory into administrative and territorial units under certain criteria for the purpose of an efficient organisation of the national administration and local self-government, enforcing the reign of law and public order and enjoyment of rights, freedoms and legitimate interests by the Republic of Belarus citizens, who reside on a permanent basis on a relevant territory (referred to hereinafter as “the citizens” or “the public”).

**LSG** means a local self-government.

**Municipal authority** means a power relationship system, which provides a framework for the local self-government authorities’ exercise of powers.

**Public administration** means a body of executive power or an executive and regulatory authority.

**Public authority** means a specific authority type, which includes both public administration and local self-government, and acts in the interest of the society, while implementing its powers in many a sphere of the social relations.

**Public self-organisation bodies** means bodies of territorial public self-government.

**Public services** means a service totality of a “shared economic interest” rendered to some groups of persons with an active engagement of the public authority, when providing, funding and regulating these, in the face of a possible market failure to render this kind of services independently. The notion of “public services,” which covers the notions of

“government/state services” and “municipal services,” is closely linked to the notion of “public authority” and has a straightforward relationship to the objectives, tasks, forms and outcomes of any activities conducted by the bodies of national and municipal management.<sup>11</sup>

**Territorial authority structure** means a relation system between the national state power and the nation’s territorial components, i.e. the population and the existing public authority bodies.

**Territorial community (or *hramada*)** means: (1) residents united by a permanent place of dwelling and common interests within the bounds of a village, town or city that form independent administrative and territorial units; or (2) a voluntary amalgamation of the residents, who are dwellers of several villages, towns or cities sharing a single administrative hub. Territorial community (*hramada*) means a basic territorial unit of a local self-government and a primary authority and management subject/object at a local level.

**Viable territorial communities** means the territorial communities formed as a result of a voluntary community merger or inclusion, which are capable of exercising, whether independently or via some relevant local self-government authorities, their powers delegated to them within the limits prescribed by law and ensuring a proper level of any services provided, notably: in the areas of education, culture, public health service, social welfare and housing and utilities infrastructure, while taking into account their human resources, financial provisions or infrastructure development at a specific administrative and territorial unit.

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<sup>11</sup> A public service (whether a national- or municipal-level one) should be interpreted as an activity of a public authority body, which provides a national or municipal service consisting in performing any actions and/or taking any decisions that trigger legal relations’ arising, alteration or cessation, or else any documented information/document’s origination due to the fact of a member of the public/entity’s petition for purposes of enjoying their rights or legitimate interests, or to exercise their duties imposed by any regulatory legal acts.



## Introduction

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Between 1994 and 1997 the Republic of Belarus adopted a number of political decisions aimed at the entrenchment in the country of the local self-government theory as a fundamental model for administration at a local level. Within the last three decades, the amendments and alterations of the local self-government legislation were aimed, as a rule, at reinforcement of governance centralisation, limitation of the local self-government bodies' functions and at a reduced possible involvement of the public in the decision-making process at a local level.

That being said, within the period of the Republic of Belarus independence, some serious transformations of an economic, demographic, information-related, social and cultural nature have come about to affect enormously the value formation and evolutionary development of the Belarusian society.

A discrepancy between the public administration system in place and the objectives of the nation's democratic development has become obvious. The major deficiencies of the former are revealed through an obsolete territorial power structure and a total political, financial and managerial dependence of the local self-government on the national-level authorities, and, by implication, through a blocked self-development potential at the local and regional levels. The situation is further aggravated by narrow opportunities for a public involvement in the decision-making process at a local level and in the area of implementing civic initiatives jointly with the local authorities, most significantly, at the grassroot power level, which is the closest one to the citizenry.

A further development and reinforcement of the modern state dictate the need for reinventing and updating the frameworks pertaining to interactions between the state and a citizen, i.e. diminishing the state's role and strengthening that played by the citizen. Changes and new approaches are needed in administrative arrangements at a local level and in the territorial authority structure, such as:

- inclusion in the legislation of the subsidiarity principle;
- functional power de-centralisation within the system of the administrative and territorial structure;
- territorial community enlargement;
- transition by the governance bodies from the role of a power institution to that of a partner of their administered objects;
- a broad access by public members and associations to the administrative decision-making process; and
- refocusing the public management system from their tasks to the task address efficiency.

A number of opinion surveys and polls conducted in Belarus in previous years also indicate a sustainable demand on behalf of the society for a necessary transformation in the relationship between the state and a citizen.

The local self-government is an institution that allows meeting the demand.

## Why a Reform Is a Must?<sup>2</sup>

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The local self-government model in Belarus is based on the theory of the state-controlled local self-government.<sup>3</sup> The substance behind the theory is that any local self-government authorities are seen as national administration bodies, while self-government is considered to be a form of state power organisation.

The specific features of the theory include the following: *a high administration centralisation level; equation of the local self-government and the national administration locally; a direct state administration on the spot* by appointing a central authority representative at the administrative and territorial units; and a *rigid hierarchy* expressed in co-subordination of inferior and superior links in *administration and self-government*.

Implementation of the theory of state-controlled local self-government leads to the appearance of an administrative model of interrelations between the state power and the local self-government, or, as an extreme option, to a complete evanescence of local self-government and to its substitution with local state administration. The existing local government and self-government model in the Republic of Belarus provides a striking example of such an extreme option.

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A centralised administration system fails to face up to the main challenge the power system has to tackle, i.e. ensuring

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<sup>2</sup> A detailed review of the current status of the local self-government system in the Republic of Belarus, which has provided a basis for these conclusions, is outlined in Appendix 1.

<sup>3</sup> The fundamental tenets of the state theory were developed between 1890 and 1892 by outstanding German scholars L. von Stein and R. Gneist. They tended to construe the local government as a part of the state. In their opinion, any administration of a public nature is a matter for the state to deal with.

decent standards of living to its citizens, since:

- the state power, due to its remoteness and focus on the central government issues, is not in a position to visualise with perfection local problems (*instructions are fulfilled, but frequently it fails to bring any real benefits to the local public*);
- official functionaries are motivated to fulfil instructions issued by superior bodies of the state power to the detriment of the local public's interests (*functionaries do not depend on the local public, neither are they accountable to it*);
- the rigid co-subordination principles deprive the civil servants of initiative and independence; and
- citizens are deprived of any realistic opportunities to take control of local affairs, which fact provokes *paternalistic attitudes within the society*.

Apart from the intrinsic drawbacks of the state-controlled local self-government model itself, its prolonged implementation in Belarus has led to an aggravation of several problematic aspects that affect in a particularly adverse way the rural areas, viz.:

- a reduction in quality and accessibility of the public services provided by the state administration authorities, such as healthcare or transportation services, social infrastructure, roads and municipal improvement);
- a mismatch between the local policies of social and economic development and the local public's interests;
- a growing discrepancy between the social standard levels among the urban and rural populations; and

- a low investment magnetism and a stagnating labour market in the rural areas.

The result is that the above challenges have contributed to spurring up migration flows from countryside to the capital and other major cities, thus aggravating further the demographic situation in most administrative and territorial units (like population aging or depopulation of rural areas and some district towns).

The lack of an appropriate reaction to the problems in place have affected the confidence level to the local authorities. Whereas, according to the survey findings published by the Independent Institute of Socio-Economic and Political Studies (IISEPS), at the period of 2004 through 2010 the local Councils of Deputies were trusted by 30 to 40% of the public, the surveys conducted by the Chatham House in January through July 2021 showed the confidence level of a mere 21%.

The need for an improvement of the existing self-governance system in this country is also supported by the public opinion polls performed by the Institute of Sociology with the Belarusian Academy of Sciences in 2018. According to the research findings, the idea was supported by 73.5% of Minsk residents and by the majority of provincial population. Among the residents of Brest, Minsk, Grodno, Vitebsk and Gomel Regions, the share of those supporting the idea of improving the operation of the local self-government bodies accounted for 66.4%, 60.2%, 55.1%, 54.8% and 43.5%, respectively (while the majority of the Mogilev Region population, or 60% of the regional residents, were at a loss to answer the question).

Preservation of the existing system brings about some serious threats for the development of the society and statehood:

- a welfare mentality and *laissez-faire* approaches among the public in respect of public affairs are gaining ground and the human potential is being wasted;
- the public confidence level to the local authorities is reduced;
- the gap between the authorities and the public widens;

- the state governance system neither develops, nor improves; and
- no forms of direct people's rule are developed (like public involvement in the decision-making process at a local level).

A reform is needed to seek as its final objective the construction of a real local self-government system by way of:

1. power de-centralization;
2. defining a reasonable administrative and territorial structure; and
3. creating the conditions for a civil society development.

## 1.

# Framework Approaches and Vectors Related to Reforming the LSG and Territorial Authority Structure in Belarus

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## 1.1. Concept Objective

The objective behind the concept is to identify the vectors, mechanisms and timeframes needed to build an efficient local self-government and territorial power structure for the creation and maintenance of a fully-fledged living environment for the public, to provide high-quality, accessible and affordable public services, to develop and mature institutions of direct people's rule, to meet the public interests in the daily lives of the people on a specific territory and coordination of the state interests with those of the local territorial communities (*hramadas*).

## 1.2. Issues to Address

The fundamental issues in the area of local self-government in the Republic of Belarus are as follows:

**Lack of basic legislative approaches needed for the development of a real local self-government supported by the principles of partnership between the state and the local communities and promoting the ideas and standards of the European Charter of Local Self-Government**

The laws in place in the Republic of Belarus fail to entrench the right of its citizens to conduct a local self-administration. The local self-government authorities (i.e. the local councils) serve as the state representative bodies and are included in the state power bodies' system.

The local self-government body system includes the authorities of territorial public self-government, which bear no signs of a local self-government body, but rather represent a form of public participation in local self-government.

The legislation in place ignores the subsidiarity principle, with the communal property being defined as a subtype of state property.

The notion of “administrative and territorial unit” is used as a primary activity subject of a local self-government. Non-existence of the notion “territorial community” (*hramada*) prevents a robust public engagement in the local self-government.

Absence of the local executive self-government bodies, limited competences and poor financial, organisational, logistic and personnel provisions have turned the local Councils of Deputies into symbolic ornamental power bodies.

### **Obsolete irrational administrative and territorial structure**

The administrative and territorial structure in Belarus put in place to serve the needs of a planned command economy reflects the economic, demographic and geographic realities going as far back as the Soviet times.

The Belarusian administrative and territorial structure with its superimposed public authority system fails to foster a transformation of the local self-government into a self-sufficient and sustainable foundation for the national development and, contrary to that, have become an obstacle in the way to a political, social and economic advancement of Belarus.



The regional (region/oblast) and sub-regional (district/rayon) levels (except for Dribin District set up in 1989) have remained intact since the 1960s.

There are some striking disproportions available both of an economic nature (such as the production potential or the taxable base) or of a demographic (population density level) and a geographical one (area or distance to the A&TU centre). The primary level is in many cases featured by a discrepancy between the administrative/territorial rural council centres and the *de facto* centres represented by agricultural townships.

The current streamlining practices affecting the administrative and territorial structure performed through enlargement of the primary-level administrative and territorial units (rural councils) lack any legally binding conceptual approaches or transparent and comprehensible final objectives and purposes.

The cumbersome three-level administrative and territorial structure requires plentiful resources to be administered.

The deficiencies in the administrative and territorial structure lead to deepening disproportions among the territories in terms of their economic or social development and hinder the construction of an efficient regional and local development system.

### **Lack of a real and efficient local self-government system**

The status of the local Councils of Deputies as representative state authorities, the lack of a legislatively defined notion “territorial community (*hramada*)” as a primary power and management subject/object at a local level, lack of executive local self-government bodies, limited competences and low financial, organisational, logistic and personnel provisions give a convincing evidence of a total substitution of the local self-government by the local state administration.

There is a disproportion in terms of powers enjoyed by the local self-government bodies and the local state administration bodies, which are expressed in a particularly striking manner at

the grassroots primary level, which is the closest one to the public, but has minimum means or powers, which fact affects negatively the quality and accessibility of services provided to the public.

### **The local self-government bodies have no financial or economic toolkits of their own**

Under the law<sup>4</sup> the economic foundations to support the activities pursued by the local authorities are provided by communal property along with revenues generated by the use of natural resources and by any other sources of revenue as provided for in the laws in effect. The communal property is made up of the property assigned to the communal legal entities and of the A&TU exchequer.<sup>5</sup>

The local Councils of Deputies do enjoy certain competences in managing the A&TU property,<sup>6</sup> but are not its owners. The Executive Committees manage and dispose of the communal property under the procedures as specified by the Councils.<sup>7</sup> It is exactly the Executive Committee Chairperson,<sup>8</sup> who has control of the property in question, which leaves serious doubts as to the availability to the local self-government bodies of any economic provisions to support their operations.

In conformance with Art. 13 of the Republic of Belarus' Constitution, land and other natural resources may only be owned exclusively by the state. From this perspective, it can be concluded that the land and other natural resources are merely put in operational control and administration by the local authorities inasmuch as they dispatch, on instructions from of the central government, a number of governmental functions at a local level. The communal property itself, along with the Republic's property, in conformance with the Constitution and the Civil Code, represents subtype of the state property, with the consequence that it may be taken away and redistributed by the central or superior authorities under administrative procedures.

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<sup>4</sup> Art. 54 of the Law of the Republic of Belarus 'On Local Administration and Self-Government.'

<sup>5</sup> Art. 55 of the Law of the Republic of Belarus 'On Local Administration and Self-Government.'

<sup>6</sup> Under Art. of the Law of the Republic of Belarus 'On Local Administration and Self-Government,' the local Councils "shall identify the procedures related to managing and disposal of the communal property, dispose of the natural resources and set in line with the laws in effect any local taxes or dues (or any preferences related thereto), as well as any payment rates for renting hunting grounds, fisheries or water bodies."

<sup>7</sup> Art. 41 of the Law of the Republic of Belarus 'On Local Administration and Self-Government.'

<sup>8</sup> Art. 47 of the Law of the Republic of Belarus 'On Local Administration and Self-Government.'

The exchequer and other local budget funds, within the framework of the centralised and hierarchical budget system, are components of the consolidated budget in the Republic of Belarus.

**The forms and procedures of public involvement in the decision-making process at a local level are imperfect, excessively complicated and bureaucratic, while a part of them is morally obsolete, which, by and large, prevents a public participation in the local development and promotes a strengthening welfare mentality.**

An analysis conducted into the forms and procedures of public engagement in preparation, making and implementation monitoring of the decisions by the local authorities highlights how imperfect the direct democracy tools are, attests to the lack of appropriate conditions needed for their practical application and reveals an excessive complication of the legal frameworks proposed.

Underdeveloped direct democracy forms and, inevitably, extreme challenges related to arranging any solidary public actions aimed at protecting citizens' rights and interests, prevent a public participation in the decision-making process at a local level or public collaboration with the local self-government bodies and the state administration to achieve common objectives of local development.

**Activities conducted by the local Councils of Deputies are shielded and untransparent for the public**

A permissive principle for citizens to attend their meetings, inaccessibility of information on decisions drafted or taken and underdeveloped information forms used to notify the public on the Councils' activities, along with the deputy pool passivity, have made the operations performed by the local Councils shielded and untransparent for the public.

**The local elections fail to meet the democratic principles**

Commencing with autumn 1996, the outcomes of all the election campaigns have not been recognised by the international

organisations by reason of multiple violations of the existing democratic standards. The most problematic aspects related to how elections are organised and conducted in the Republic of Belarus are as below:

- interference in the election processes both by the national- and local-level bodies of the national administration;
- undemocratic manners to form electoral commissions;
- untransparent procedures to register deputy candidates;
- unequal electioneering conditions for the candidates;
- untransparent procedures set for an early voting;
- untransparent vote counting;
- preventing public observers at polling stations from observing the procedures of voting or vote counting; and
- inefficient procedures set for appealing against actions by an electoral committee or election outcomes.

Besides, the use of the majoritarian election system, only hinders the political party development and deprives voters of a choice on the grounds of their political orientation.

**Lack of a HR training system based on modern knowledge for the local self-government authorities and lack of a system for personnel choice based on professionalism, transparency and equal access to positions**

The personnel training system in Belarus has an explicit *penchant* for the benefit of the national administration. The General National Classifier of the Republic of Belarus GNCRB 011-2022 *Professions & Qualifications* includes three professions (for bachelors or masters) that relate to the state administration system: *State-Building, State Administration & Law, and State Administration & Economy*. However, all of these, even nominally, fail to relate to the local administration and self-government. New professions came to existence in 2022: *Social Communications in State Administration* and *Information Analysis Provisions in National Administration*, which likewise lack a direct linkage to local self-government.

A major breakthrough came about in 2022 with introduction of

the profession *Urban Planning & City Management*. However, the specialty is structured with a bias towards the natural sciences, rather than managerial or social ones.

It is only the profession list for advanced training of executives and experts with university degrees that features the item *National & Local Administration*. However, both the advanced training and retraining curricula for the local self-government bodies are limited by the existing national legislation and ideological issues. The result is that specialists at a local level (with some minor exceptions) have a monodirectional knowledge limited to the national legislation, only. The Belarusian experts employed by the local authorities lack information on the contents, essence and norms of the European Charter or other international instruments in the areas of local self-government, as well as on the relevant laws in effect in foreign countries.

The experts in question have neither a common pan-European conceptual framework (including its Russian-speaking segment), or a shared terminology, they lack information on any past or ongoing reforms in the Central and East European countries (including the CIS countries) and on reform outcomes with their successes or failures. A low awareness level on local self-government as a public authority form is obvious among the researchers and managerial personnel.

There are no momentous research papers or theses<sup>9</sup> on the topic of local self-government, because the theme is seen in Belarus as an unpromising one.

Both the methodological frameworks available to the Belarusian universities and the academia's background in the education major *State Administration* leave much to be desired, whereas the *Municipal Law* course has been all together excluded from the university syllabuses. This kind of situation might bring about some very grave challenges as soon as in the immediate future. The effects would be felt in a particularly acute manner at the modernisation period of the local self-government system in place and during its harmonisation with the fundamental/basic requirements of the European Charter of Local Self-Government.

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<sup>9</sup> The number of publications by the Belarusian scholars on the local self-government issues is negligible, while the dissertation research papers, according to the State Commission for Academic Degrees and Titles of the Republic of Belarus, do not feature any papers with a direct relation to the LSG topics.

The managerial decision quality is on a constant decline, while the corruption level is on the rise.<sup>10</sup> Therefore, the urgent need for personnel (advanced) training in the areas of local self-government based on modern knowledge is extremely high and requires a special focus with inevitable adjustments to be introduced.

### 1.3. Issue Addressing Ways and Methods

The local self-government reform provides for a profound and extensive transformation of the present state administration system at a local level through the means of power de-centralisation and based on the subsidiarity principle.

The issues are proposed to be addressed in the following manner:

#### **Creating a legislative framework to put through a local self-government reform by altering and amending the Constitution and the laws to ensure the following:**

- entrenching LSG as a special and independent, within the limits of its powers, type of public authorities, which is not included within the state power body system;
- entrenching the citizens' right to implement local self-government;
- entrenching the subsidiarity principle;
- entrenching the notion of *territorial community (hramada)* as a basic territorial local self-government unit and as a primary power and administration subject at a local level; and
- entrenching the communal property (along with the state and private ones) as a separate/independent property type.

#### **Identifying a justified territorial basis for the activities of the LSG and state administration bodies capable of ensuring accessibility and a proper quality of the public services provided by these authorities, as well as providing the prerequisite resource potential**

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Belarus in 2022 was ranked 91<sup>st</sup> in the Transparency International rating with 39 points. With that said, our country had lost year-on-year at once 9 positions. [Link](#)

In order to address the issue, methods and criteria of forming the administrative and territorial units should be defined and a thorough analysis must be carried out into the available options as to their optimum fitness for the functions or powers proposed, as well as into their viability in view of performing them. Based upon the criteria and methods developed, a methodology has to be prepared to form the territorial communities and, in cooperation with the local authorities, the territorial community modelling conducted.

### Creating the prerequisite material, financial and organisational conditions for the local self-government bodies to exercise their own or delegated powers

The financial and economic framework for the local self-government is represented by a totality of legal norms that entrench and regulate the social relations linked to the formation and use of communal property, including the local budgets and other local financial resources in the interest of a territorial community (*hramada*). The financial and economic framework, while guaranteeing an economic independence of the local self-government, serves to meet the public needs and supports the current operations and development of the territorial community – *hramada*.

The recognition of and the guarantees provide by the state to the local self-government do signify that the state commits itself to creating the required economic, financial and other conditions and premises needed for the development of the local self-government's financial and economic foundations.

With these goals in mind, the state power bodies in the Republic of Belarus shall:

- introduce into the Constitution and legislative instruments the notion and definition of communal property;
- set the principles and procedures for communal property formation;
- as a measure of state and communal property delimitation, transfer on a gratuity basis into the communal property any infrastructure objects or natural resources to the territorial communities (*hramadas*) and to



the Regional Councils;

- transfer to the local self-government bodies any material or financial resources needed to exercise individual state powers, which such bodies may be entrusted with;
- develop and set the minimum social state standards;
- regulate relations between the national budget and the local ones;
- ensure a balance of the minimum local budgets based on the norms of minimum fiscal capacity;
- provide guarantees of a local self-government's financial independence;
- compensate to the local self-government any additional expenditures suffered as a result of decisions taken by the national government bodies; and
- participate in addressing local tasks through ear-marked national or regional programmes.

*The financial and economic foundation of the local self-government is made up of the communal property, which includes:*

1. *immovable and movable assets* assigned for management by the local self-government authorities, as well as any other property required to meet the public needs of a *hramada*; and
2. *local budgets* and other financial resources of a *hramada*.

**Power delimitation within the local self-government and state administration body system at various levels of administrative and territorial structure based on the subsidiarity principles**

**Power delimitation between the state administration bodies and the local self-government bodies based on power de-centralisation**

**Introduction of a state monitoring mechanism as how decisions made by the local self-government bodies and the quality of public services provided to the residents comply with the Constitution and the laws in effect in the Republic of Belarus**



Under the prevailing conditions of a total nationalisation of the local authorities' activities, the communal property being a mere subtype of state property and unified systems of the state-run financial/budgetary and taxation branches, the supervision and state monitoring type mechanisms in place in Belarus are natural and justified.

However, when conducting a local self-government reform based on the administration de-centralisation and subsidiarity principles, the focuses in the area should be shifted to form a new system to supervise and monitor the activities by the local authorities through a limited state interference in the activities of the local representative and executive authorities, extending options for an internal monitoring within the local self-government system, broadening the judicial monitoring forms, as well as by legislatively introducing some real and efficient non-government monitoring forms in respect of the local authorities' operations by multiple civil society structures – most significantly by the territorial community (*hramada*) residents.

**A maximum public involvement in the managerial decision-making process and promoting the development of civil society and forms of direct people's rule**

In order to encourage civic activity and a sustainable civil society, some appropriate state policies and support are necessary. Legislative innovations aimed at improvement and regulation liberalisation of the civil society organisations and at the development of the direct democracy forms should mark their first steps.

## 1.4. Principles Pertaining to the Reforms in the Local Self-Government and Territorial Authority Organisation

The local self-government, along with the territorial power organisation, should be reformed in accordance with the below principles:

- rule of law;
- publicity, transparency and public participation;

- local self-government ubiquity;
- subsidiarity;
- public service accessibility and affordability;
- accountability of the local self-government bodies and officials to the territorial community (*hramada*);
- accountability by the local self-government bodies to the state administration authorities as to compliance with the Constitution and the laws in effect in the Republic of Belarus;
- legal, financial and organisational capabilities of the local self-government;
- state support to the local self-government;
- partnership between the state and the local self-government;
- sustainable territory development; and
- using other countries' experiences.

## 1.5. Reforming Tasks

### Creating a legislative framework to reform the local self-government and the territorial power structure

The creation of legislative frameworks based on the decentralisation and subsidiarity principles for the construction of a real and efficient local self-government system would become a priority step in the reform:

- formation of the territorial communities;
- conducting an administrative and territorial reform;
- providing accessible, affordable and high-quality services;
- achieving an optimum power-sharing between the LSG bodies and the state administration authorities;
- providing a justified territorial basis for the activities carried

out by the LSG and state administration authorities;

- creating the prerequisite material, financial and organisational conditions needed by the local self-government authorities to exercise their own and delegated powers; and
- improving direct democracy forms.

## Reforming the territorial power structure

The vital tasks a territorial power structure reform in Belarus must tackle are:

- a reform of the administrative and territorial division in the state means determining a justified territorial basis for the activities conducted by the local self-government authorities with the goal in mind to guarantee accessibility, affordability and a proper quality of the public services provided by these authorities, as well as a resource basis needed for that;
- an administrative reform means bringing about some changes in accordance with the mission and objectives of the state administration system, institutions, organisational structures, tools or financial and economic functioning foundations;
- a local self-government reform means changing the organisational system (formation of territorial communities with their executive bodies) and the operational foundations of the local self-government authorities in addressing issues of local significance and meeting the needs of public and territorial communities for social, municipal or administrative services and social or economic development of communities and regions, while reorganising the relationship between the local self-government bodies and the national administration authorities;
- democratisation of public life;
- a broad inclusion of the public in the activities pursued by the territorial communities (*hramadas*) and their management;

- reinvigoration of public initiatives proposed by residents of a territorial community (*hramada*) and unlocking their self-development potential; and
- strengthening the civil society.

When preparing reforms of the territorial power structure, the European classification of administrative and territorial units (Nomenclature of Units Administrative Statistic – NUTS) and the experiences accumulated by foreign countries, notably: Lithuania, Latvia, Poland or Ukraine, should be taken into account.

### Ensuring accessibility, affordability and quality of public services

Public services should be provided in line with relevant state standards and norms, as well as while taking into account the need for ensuring:

- territorial accessibility, which means providing the services at the area where the community residents live;
- a proper material and technical base for providing basic public service types (the local self-government bodies should have at their disposal appropriate premises and infrastructure);
- public information on the services and their providing procedures and conditions; and
- providing public services in a professional manner.

Besides, the officials employed by the local self-government bodies must be provided with opportunities to upgrade their qualifications.

### Achieving optimum power-sharing arrangements between the LSG bodies and the state administration authorities

Accessibility, affordability and a proper quality of public services are ensured through an optimum power-sharing between the local self-government bodies and the state administration authorities at various levels of the administrative and territorial structure based on the principles of subsidiarity and de-centralisation.

The grassroot-level local self-government bodies should be provided with powers in conformance with their HR, financial and infrastructure potentials and resources on a new territorial basis.

The major powers enjoyed by the local self-government bodies are to be used to put in place the following:

- local economic development (attracting investments and developing enterprise);
- development of local infrastructure, notably: roads, water, heat, gas and electricity supply lines, sanitation, information networks and structures to serve social or cultural purposes;
- planning the development of the community (*hramada*) territory;
- addressing the issues of territory development (providing land plots, providing construction permits and operational acceptances for buildings or structures);
- improvement of areas;
- providing housing and utility services (district water, heat, gas and electricity supply, sanitation, waste removal and disposal, building and structure maintenance and care of communal property territories around houses);
- passenger transportation arrangements on the territory of the community (*hramada*);
- upkeep of the local-significance roads and streets on the community (*hramada*) territory;
- public safety and security;
- firefighting service;
- managing day-care centres, schools and out-of-school education facilities;
- providing emergency healthcare aid, primary- and secondary-level healthcare services and disease prevention services;
- developing culture and physical fitness (setting up and maintaining community centres, libraries, stadiums or

workout sites);

- providing social aid through territorial social centres; and
- providing administrative services through relevant facilities.

Functional units of the central state administration authorities at the grassroots level should provide the following services:

- sanitary-and-epidemiologic protection;
- public social welfare (payment of retirement benefits, subsidies or compensations);
- exchequer services; and
- registration of Civil Registry acts.

The major powers enjoyed by the regional-level local self-government bodies should be ensuring the following:

- regional development;
- environment protection;
- regional infrastructure development, primarily: highways (except for the roads referred to communal property) and general-purpose passenger haulage networks (except for the internal community ones);
- vocational education and training;
- providing a highly-specialised healthcare assistance; and
- development of culture, sports and tourism.

The state may delegate to the local self-government bodies the powers of the state administration authorities. In this case, the powers are transferred by the state to the local self-government bodies to their activity level, which is capable of their reasonable exercise from the viewpoint of its HR, financial and infrastructure potential. Along with the powers, the resources required for their exercise are also transferred to the local self-government bodies.

For an optimum power-sharing between the local self-government bodies and the state administration authorities at various levels of the administrative and territorial structure, the following should be put in place:

- identifying a sufficient taxable base to enable a possible exercise by the local self-government bodies of their own powers, while taking into account some objective funding criteria;
- creation of representative local self-government bodies at each administrative and territorial level with their own executive bodies;
- improvement of the system intended to involve the public in managerial decision preparation and implementation monitoring; and
- efficient state monitoring over the compliance by the local self-government bodies of the Constitution and laws in effect in the Republic of Belarus.

### **Identifying a justified territorial basis for the activities pursued by the LSG bodies and the state administration authorities for the purpose of ensuring accessibility, affordability and a proper quality of public services provided by these institutions**

Formation of criteria set for the administrative and territorial units of various levels in the state's administrative and territorial structure should be performed, while taking into account the facts that:

- the administrative and territorial structure is made up of two levels: basic/grassroots and regional ones (please, refer to Fig. 1);
- the area of an administrative and territorial unit is continuous;
- an administrative and territorial unit may not have inside it any other administrative and territorial units of the same level; and
- the area of a basic-level administrative and territorial unit is determined, while taking into account accessibility of the main public services provided at the grassroot level (the

arrival time of an ambulance to provide an urgent healthcare aid in emergency situations and that of firefighting brigades must not exceed 30 minutes).

Operating at the basic level (according to the European classification NUTS-4) are local self-government bodies (rural, town or city Councils with their executive bodies), as well as functional units (representative offices/representatives) of the territorial authorities of any central state administration authorities.

An administrative and territorial unit is a territorial community (*hramada*). Their proposed number is 160 to 200 administrative and territorial units.

Operating at the regional/provincial level (according to the European classification NUTS-3) are regional/provincial Councils with their executive bodies, general-competence regional/provincial (*kray*) state administrations and territorial authorities of the central state administration bodies. Administrative and territorial units are regions/provinces + the City of Minsk.

The proposed number ranges between 15 and 20 administrative and territorial units.

The Regional/Provincial Councils are representative bodies of the local self-government at the regional level, which represent Common interests of the territorial communities in the villages, towns and cities within the bounds of powers identified under the Constitution and the laws in effect in the Republic of Belarus, as well as the powers transferred to them by the rural, town or city Councils.



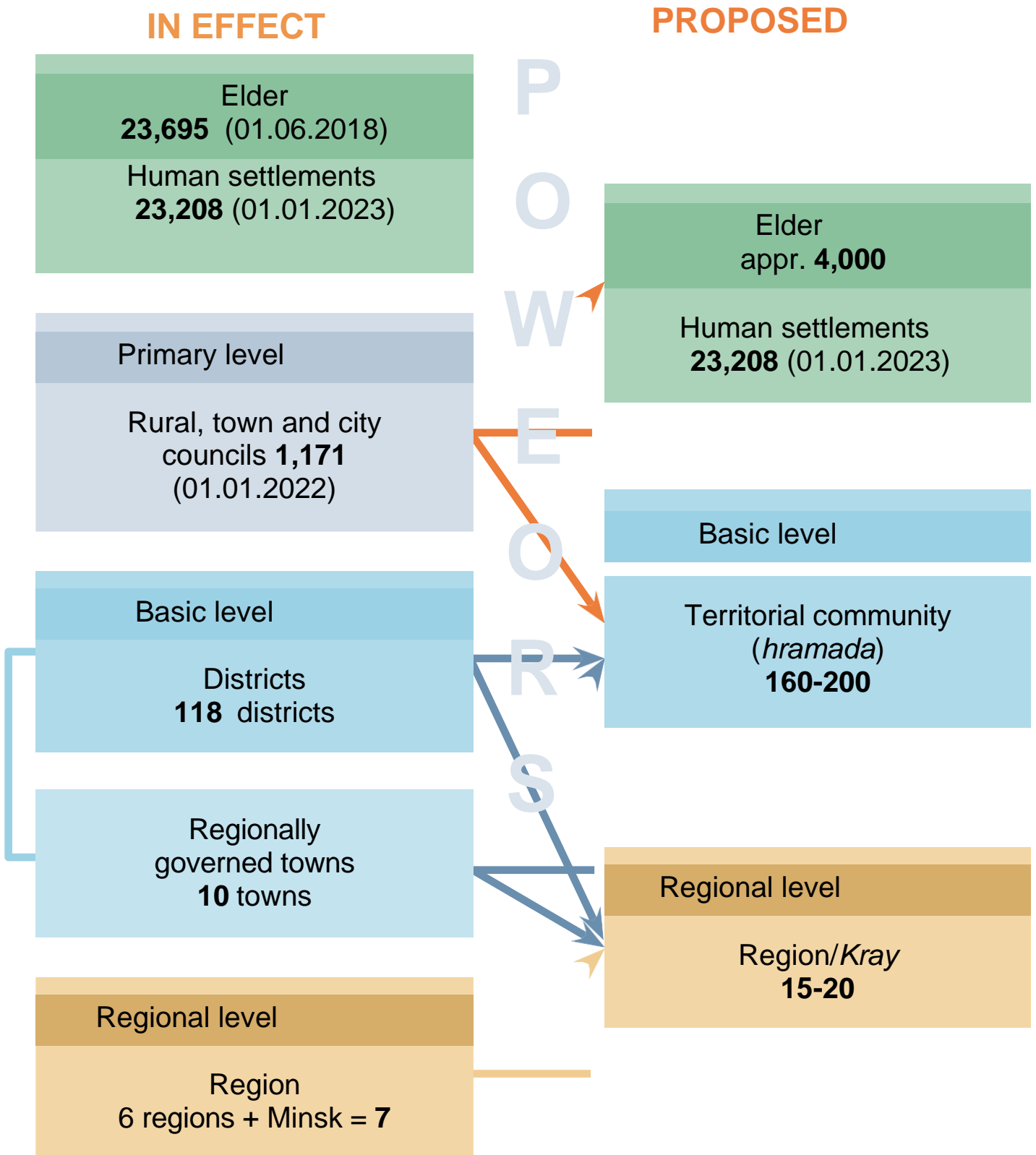
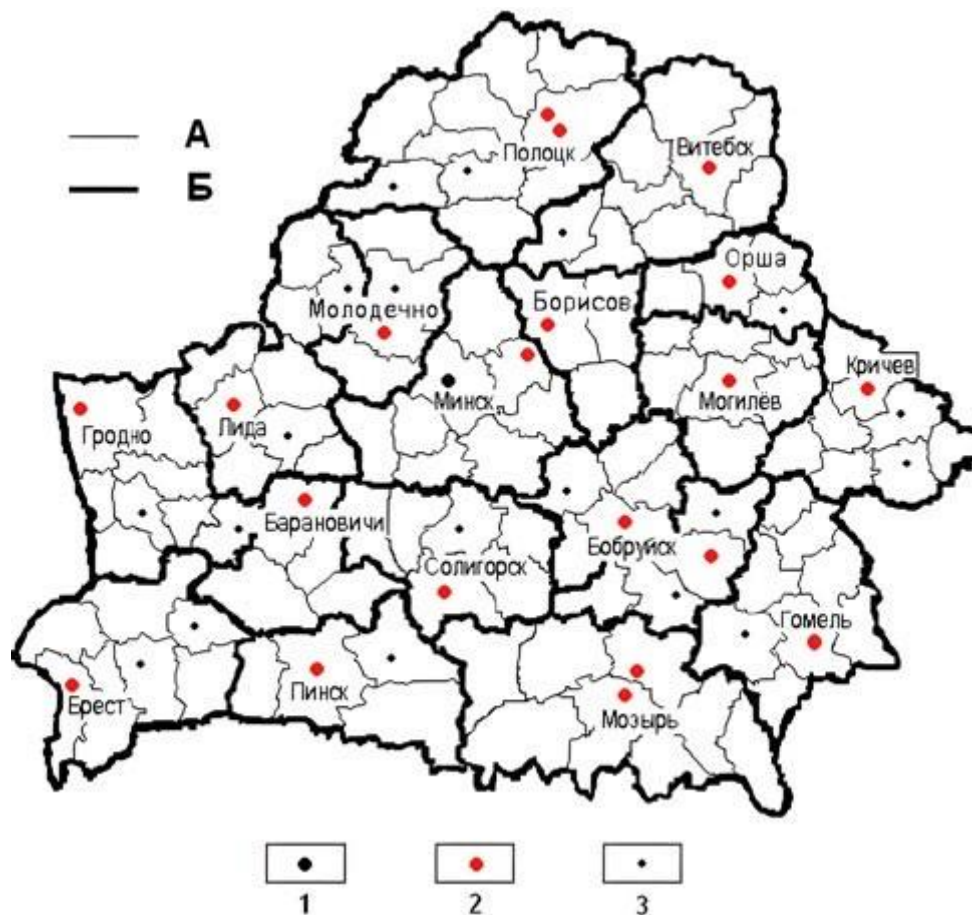


Figure 1. Reforming procedure of the administrative and territorial division



A – borders of territorial communities (*hramadas*) – basic level, 160-200 units  
 B – borders of regions/provinces – regional level, 15-20 units

Figure 2. District and region planning for the Republic of Belarus<sup>11</sup>

The status of the City of Minsk should be regulated in a separate law.

### Putting in place proper material, financial and organisational conditions to enable the local self-government bodies to exercise their own and delegated powers

Creation of proper material, financial and organisational conditions and formation of a HR pool to enable the local self-government authorities to exercise their own and delegated powers should be performed, while complying with the following principles:

- providing transfers from the state budget directly to each local budget;
- calculation of the equalisation subsidies' amount on the basis of unified standards related to public service provision;

<sup>11</sup> Ridevskiy, G. V. Centre versus Periphery Processes and Regional Development in Belarus: A Monography / Ridevskiy, G. V. / Minsk: BelNIIT *Transtekhnika*, 2020. – 346 pp.

Ридевский, Г. В. Центр-периферийные процессы и развитие регионов Беларуси: монография / Г. В. Ридевский // Минск: БелНИИТ «Транстехника», 2020. – 346 с.

- availability of resources needed to exercise the local self-government powers as set in the laws in effect;
- identifying as a financial basis for the local self-government bodies to exercise their powers certain territory-specific taxes and dues for a relevant administrative and territorial unit;
- providing to the local self-government bodies the right to regulate the local taxes and dues' rates;
- preventing the provision by any other local self-government bodies and state administration authorities of tax preferences that reduce own revenues of the local budgets. Preferences in respect of the local taxes and dues may only be set by the local self-government body, whose budget receives such taxes and dues;
- providing to the local self-government bodies an access to attracting credit resources for an investment-driven development through a simplified loan approval and local guarantee procedures and their balanced state monitoring methods aimed at preventing bankruptcies of the communal property law objects;
- a higher transparency and efficiency in public finance use through integration of the Management by Objectives method for all the local budgets;
- allocating some property as the material foundation to the local self-government, notably: lands owned by the territorial communities (*hramadas*) in villages, towns, cities and regions, as well as a proper taxable base;
- providing to the territorial communities (*hramadas*) the right to dispose of the land resources within its territory or to merge its property and resources within the framework of cooperation among the territorial communities for the implementation of joint programmes and for a more efficient provision of public services to residents of adjacent territorial communities (*hramadas*);
- maximum involvement of the public in managerial decision-making processes related to issues of local significance and promotion of the development of direct democracy forms;

- integration of efficient mechanisms for a public engagement in development by the local self-government bodies of vital managerial decisions, in particular, on issues related to determining strategies for the development of a territorial community or to approving territorial community statutes or draft urban-planning documents (master plans for the development of cities, towns or villages);
- providing the right to the general meetings of citizens in their place of residence, in conformance with the laws and the territorial community statute, to initiate an extraordinary report by the local self-government officials to the territorial community, as well as an obligation for the local self-government bodies and their officials to justify their decisions on taking into account or ignoring resolutions passed by general community meetings;
- setting up some consultative bodies with the local self-government authorities to engage in consultations with the public or to promote public expertise check-ups for any prepared or passed decisions by the local self-government authorities;
- providing to the territorial communities the right to a local referendum;
- improvement of the procedure intended to set up population self-organisation bodies, setting the procedure for providing them with a part of the local self-government bodies' powers, as well as providing resources to exercise the said powers, using such resources and reporting their use;
- expanding the practices for setting up population self-organisation bodies, notably: in the territorial communities that cover residents of more than one human settlement; and
- integration of a mechanism to conduct a state monitoring by the local state administrations as to how decisions by the local self-government bodies and qualities of the public services provided comply with the Constitution and the laws in effect in the Republic of Belarus.

## 1.6. Concept Implementation Stages

The concept should be implemented in three stages.

STAGE I – preparatory one, duration – 3 to 4 years.

Objective:

- Creating legal, financial and organisational conditions for the reform of the local self-government and territorial power structure based on the principles of de-centralisation and subsidiarity, abiding by the norms of the European Charter of Local Self-Government, as well as the development of forms and mechanisms of direct people's rule; and

- Preparation of the society to reform implementation.

Major tasks:

1. Setting up the Ministry of Community and Territory Development as a pivotal state administration authority to conduct the reform of local self-government and territorial power structure to prepare the reform's scientific, methodological and legislative provisions and to perform coordination, monitoring and supervisory functions within the reform implementation process.
2. As a priority measure, altering the Constitution and the *Law On Local Administration and Self-Government* as to the return to the local self-government authorities of the executive bodies.
3. Conducting local elections.
4. Preparation and approval of a concept for the local self-government and territorial power structure reforms.
5. Preparation of a territorial power structure reform:
  - modelling the administrative and territorial units and developing the draft regulatory legal acts needed to form a new territorial power structure system;
  - analysing reform options of the administrative and territorial structure;
  - preparing proposals on power-sharing within the system of local self-government and state administration authorities at various levels of the administrative and territorial structure based on the de-

- centralisation and subsidiarity principles;
- drafting proposals on providing the local self-government bodies with the pre-requisite material, financial and organisational resources for them to be able to exercise their own and delegated powers; and
  - drafting proposals on denationalisation of communal property and on formation of municipal property.
6. Preparing a mechanism for a state monitoring over how decisions passed by the local self-government authorities and the quality of public services provided to the population comply with the Constitution and the laws in effect in the Republic of Belarus.
  7. Preparing a legal regulatory framework basis (including alterations and amendments in the Constitution) for a reform of the local self-government and territorial power structure based on the de-centralisation and subsidiarity principles.
  8. Preparation for signature of the European Charter of Local Self-Government.
  9. Improvement and de-bureaucratisation of the direct people's rule forms and putting in place favourable legal conditions for a broad involvement of the public in the decision-making processes within the local self-government bodies.
  10. Strengthening and developing the (advanced) personnel training in the areas of local self-government and curriculum updates:
    - integration by the Ministry of Education of the educational major *Local Self-Government*, teaching *Municipal Law* and other similar educational courses at the state-run and private higher and secondary educational establishments; and
    - arrangement by the Ministry of Education of a training centre network to train and upgrade qualifications of executive-level personnel and civil servants of the local self-government and administration (incl. educational institutions like the Higher School of Public Administration).
  11. Ensuring publicity and transparency within the reform preparation process:

- staging an event cycle for the purpose of discussing, proposal drafting, foreign experience sharing and upgrading the awareness levels among the civil servants and civil society representatives in the sphere of local self-government;
- conducting an extensive campaign aimed at raising the public awareness on the objectives, tasks and expected outcomes of the reforms in the local self-government and territorial power structure (like mass media running dedicated programmes, columns or websites); and
- publication of popular brochures or booklets explaining the essence of local self-government and its advantages, as well as textbooks, manuals, dedicated websites, newspapers, magazines, etc.

STAGE II – the main one, duration – 3 to 4 years.

Objective:

Reforming the local self-government bodies and the territorial power structure at the grassroot level.

Major tasks:

1. Adopting fundamental legislative enactments to support reforms in local self-government and territorial power structure.
2. Formation of territorial communities.
3. Carrying out an institutional reorganisation of the basic-level local self-government bodies and territorial representative offices of the state administration authorities on a new territorial basis.
4. Preparing and conducting elections of the local councils in the territorial communities (*hramadas*).
5. Implementing a set of measures to provide the local self-government bodies with appropriate material, and organisational resources for them to be able to exercise their own and delegated powers.
6. Integration of new mechanisms to provide public services. Unification and standardisation of the public



services provided to residents by the local self-government state administration authorities, while taking into account the new administrative and territorial basis and the principle of a maximum service accessibility for consumers; and specifying at the legislative level the conditions for the proper funding.

7. Ensuring publicity and transparency within the reform preparation process and public involvement in the decision-making process at a local level.
8. Conducting a monthly-basis monitoring and annual-basis assessments of the reform progress in local self-government and territorial power structure.

STAGE III – final one, duration – 3 years.

Objective:

- a reform of the local self-government bodies and territorial power structure at the regional level; and
- improvement of the mechanisms used to render public services and through which the local self-government system functions and is supplied with material, financial and organisational provisions.

Major tasks:

1. Creation of a system of local self-government bodies and state administration authorities of a general competence at the regional level based on the new administrative and territorial structure.
2. Integration of a state supervision and monitoring mechanism over how decisions passed by the local self-government and quality of the public services provided to the population comply with the Constitution and laws in effect in the Republic of Belarus.
3. Improvement of the organisational structure and decision-making or decision implementation processes within the local self-government bodies.
4. Development of cooperation mechanisms among the territorial communities (*hramadas*).
5. Improvement of the tools used to provide financing to the local self-government bodies (financial equalisation system, subventions, subsidy, taxes, credits, etc.,



budget process and communal property management.

6. Setting up the Belarusian Hramada and Regional Council Association.
7. Development of public involvement forms in local self-government.

## 1.7. Reform Funding

The financial support for the measures aimed at the reform concept implementation should be provided from the state and local budgets within the bounds of the amounts provided for in the budgets of the local self-government and state administration authorities for the relevant year, as well as at the expense of international technical or financial aid.

## 2. Transition-Specific Issues

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### Potential challenges to the local self-government and territorial power structure reforms.

The large-scale transformations needed to form an efficient system of local self-government and territorial power structure contains multiple diverse challenges. Availability of a tentative list of the existing obvious and covert (but plausible) challenges and obstacles capable of affecting decision-making on implementing the reform or its successful implementation process enables us to prepare some action options aimed at their elimination or mitigation. As a rule, such a list should make an integral part of the reform implementation plan/strategy/tactics.

The existing obvious challenges to be faced by the adherents of reforming the local self-government and territorial power structure include:

#### formation of a new political elite

Some theoretical publications presented by outstanding scholars or experts in the areas of state building and administration suggest that peculiarities of local administration in a country are in many respects predetermined by its national traditions as to the public power structure. The Belarusian local self-government model serves to prove this academic opinion, while vividly demonstrating a dominating influence of the Soviet patrimony on

the currently ruling political group.

The factor represents a grave challenge for the reform: Soviet-minded politicians neither are able to take a decision on dismantling the existing state administration system and on creating a real local self-government system, nor they are capable of managing efficiently under the new conditions. As a matter of fact, we shall be faced by a completely new philosophy of the state basing on the subsidiarity and de-centralisation principles, where a human being is the main subject for any activities, while other institutions are created as auxiliary ones in respect of her/his actions; where there is no hierarchical dependence of administration subjects; where a considerable part of powers is concentrated at the level closest to the public and assigned to the territorial communities (*hramadas*); and where an influential civil society is a fact of life.

Power should be assumed by a new political elite with an understanding of the state's role and functions in interaction with the society, role and place in the state of the local self-government institution and choice of a local self-government model formed in conformance with contemporary realities, and which is capable of liaising successfully with the state power authorities for the benefit of the society at large.

Addressing the issue implies a power transit and the rise of new political elites through free and democratic elections.

### **expert knowledge needed to prepare a reform: setting objectives and tasks with the ways to meet them**

In order to prepare a reform of local self-government and territorial power structure, a large amount of work must be done. Constitutional amendments should be drafted, a number of new laws prepared (on local self-government, on communal property, on territorial communities, on local budgets, on administrative and territorial structure, on municipal civil servant's status and so on) and the existing legislation altered accordingly. A huge amount of work will have to be done to prepare a new administrative and territorial structure and a methodology to form or model the territorial communities.

The reform encompasses some complicated institutional systems that affect the interests and daily livelihoods of the society at large, which fact burdens experts with a high responsibility level and requires from them profound economic knowledge and skills. An analysis into the research, dissertations, theses and publications in Belarus on the topic for the purpose of identifying how deeply and scrupulously the existing issues have been perceived, as well as for an evaluation of the available expertise potential for reform preparation causes more doubts than self-efficacy.

Indeed, for example, according to the information provided by the State Commission for Academic Degrees and Titles, between 2016 and 2023 there were all together no dissertations recorded on the topic and just 6 ones touched upon it indirectly!

The situation with publications is identical: compared to all of our neighbouring countries, their number is miserably negligible! The publications, as a rule, either tend to support the actual administration, or deal with secondary problematic aspects, while containing no proposals on the development of the local self-government system in Belarus at all.

The key restraining factor for an activity on behalf of the expert community (academic research, analytical articles, public discussions, etc.) in the area of state governance and local self-government is an extreme politization of the theme. Any criticism or proposals aimed at changing the existing approaches and principles in administration are perceived by the ruling political group as an expression of disloyalty to the authorities and are pregnant in rather foreseeable consequences. In actual terms, the topic's publicity has been tabooed. The result is that the expert community in this domain degrades, rather than develops. As far as drafting proposals and putting in place legislative provisions to support the reform of the national administration and local is concerned, the most predictable problems will be related to an insufficient expertise potential.

At the same time, the topic of the administrative and territorial structure has been represented in the expert community by very specific and justifiable proposals. Two monographs were published in 2020 and 2022 (author G.V. Ridevskiy),<sup>12 13</sup> while in November 2019 a publication authored by R. Pulvas<sup>14</sup> and S. Yanochkin<sup>15</sup> was presented. There are also other, earlier proposals on reforming the administrative and territorial structure.

However, the papers put a focus on the economic, demographic, environmental, geographic and other aspects, which, beyond any doubt, although significant, are not sufficient for a holistic representation of the territorial power structure, because they fail to contain a proper linkage to the administration system or approaches to the formation of territorial communities, a basic unit of the administrative and territorial structure. Nonetheless, the works demonstrate the availability of a sufficient expert potential for preparation of the administrative and territorial structure reform.

### public support for the reform or, at least, agreement to the changes

For a successful reform implementation, its public support is a highly important factor. At this moment in time, public awareness of the essence and role played by the local self-government in supporting people's daily livelihoods remains at a low level.

The society should be continuously and efficiently ever more informed on the local self-government role, purpose and objectives. Even at present, under the conditions of prevailing realities, while using the independent mass media and having addressed organisational issues, we might hold on the topic a cycle of discussions or round tables to debate over the vital elements of the forthcoming reform with an involvement of the expert community and civil society organisations' representatives for the purpose of bringing the information to the public at large.

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<sup>12</sup> [Link](#)

<sup>13</sup> [Link](#)

<sup>14</sup> [Link](#)

<sup>15</sup> Movement for Freedom, A Compendium of Expert Materials No. 2, 2021 / Рух за свабоду, зборнік экспертных матэрыялаў №2, 2021

As the foreign countries' experiences demonstrate, implementation of the local self-government and territorial power structure reforms could bring along new challenges to the Belarusian society. The new challenges are most likely to arise within the process of the administrative and territorial reform and territorial community formation, because it is exactly here that considerable changes (transition to a two-level administration system and a major rural council enlargement) are expected. The appearance of potential challenges may be referred to the following factors:

- communication: an inefficient communication between the authorities and the public and a low public awareness of the reform;
- mentality: a low confidence level to the national and local authorities and threats posed by closure of budget-funded institutions and businesses or a reduction in the numbers of such social sphere facilities as schools, day-care centres or healthcare facilities by reason of merging several human settlements into one community; or loss of jobs, disappearance of small human settlements and a general lack of understanding prospects ahead;
- economy: the assumed reduction in financial opportunities related to merging a "rich" rural council with a "poor" one, reluctance to share financial and material resources with the "poor" rural councils or reluctance to merge suburban rural councils with big towns or cities by reason of a fear to lose control of the local budget and closure/relocation of the social sphere facilities from a rural council to an urban area;
- geography: a potential deterioration of accessing the social services due to an increased distance to the service hubs; and
- environment: refers to arising problems from merging small human settlements to urban territorial communities and fears that the suburban territories will be used to accommodate harmful and unsafe production units or landfills and that the recreational areas outside the towns or cities would disappear.

Within the process of reforming the administrative and

territorial structure and territorial communities' modelling, all the above factors are to be considered to eliminate the reasons for the rise of any potential challenges and, by implication, for the reform deceleration or discreditation.

### persons prepared for a practical reform implementation

Availability of a human potential capable of addressing the task will have a key significance in reform implementation at a local level. At the local level, the core role in reform implementation will be played by two major groups:

- local ruling elites (deputies and local council or executive committee staff of the regional, basic and primary levels and representatives of other government authorities); and
- representatives of civil society organisations (public associations, NGOs, population self-organisation bodies (bodies of territorial public self-government), public initiative groups and local public activists.

## Local ruling elites.

A key challenge in terms of the reform implementation is represented by readiness and capabilities on behalf of the local ruling elites to support the reform and to engage pro-actively in its preparation and implementation.

In Belarus, for thirty years the governance system at a local level has been operating under the conditions of a rigid centralisation, with its major activity subject being represented by territory, rather than people. During all these years, the system has been strengthened and improved, while using some obsolete HR selection and training methodologies. The reform transforms drastically the existing system: de-centralisation changes the state's institutional foundations, whereas the subsidiarity defines the human being as a major subject of any activity and upends the subjects' hierarchical dependence, the local self-government bodies making no part of the state power bodies.

A situation arises when the future changes require completely different approaches to management, but an overwhelming majority of the current local authority employees will remain in their jobs and

they will have to put through the reform.

To what extent the local elites are ready and capable to embrace the reform? How many officials would be able to adapt the new conditions?

Far from all the employees are happy with the current vertical arrangement of the representative and executive power bodies. Some of them are not satisfied with the strictly centralised administration system and with a substantial material or financial dependence on the vertical top or superior administration authorities, which restrict their independence. A reform to a large degree eliminates the local elite dependence on the centre and provides them with a greater independence in addressing any issues of local significance, which serves to strengthen their positions and importance. This should encourage the local elites to support the reform.

The major tasks for the local authorities at the preparatory stage of the reform are:

- involvement in discussing the regulatory legal framework reform;
- arrangement of public outreach work on the reform's tasks and objectives;
- information collection and involvement in territorial community modelling;
- involvement in formation communal property formation; and
- promoting the development of civil society organisations.

Certainly, the reform will create some extra pressures in the local authorities' operations and would require from the local elites a display of hitherto unsolicited qualities, such as leadership, creativity, ability to engage in a public discussion or to listen to and to hear its opponents' opinion, etc. The reform may affect the personal financial or social interests of individual civil servants (job loss or demotion as a result of administrative and territorial units' enlargement, a salary cut, a longer commuting distance, etc.) and, by implication, cause a covert or overt resistance to the reforms.

Therefore, it is to be expected that not all the employees will meet the new requirements and not all of them will be happy with the new



working conditions, whereas some of them will be lustrated by reason of some earlier actions performed by them. Inevitably, a need will arise for new skilled personnel, whose training has to begin as soon as possible.

## Representatives of the civil society organisations.

Following the power transition, a priority decision to be taken by the new authorities will become creation of conditions for a rapid strengthening and development of the civil society organisations. Representatives of the civil society organisations need a liberalisation of procedural and institutional conditions for their activities and extended opportunities for an active public engagement in the processes of decision drafting and making at a local level. The following decisions should be taken as priority steps:

- revoking the decisions made after 01.01.2020 on winding up/banning civil society organisations;
- creation of an updated regulatory legal framework on the direct people's power forms aimed at de-bureaucratisation, higher efficiency and public energising and encouragement for an involvement in the issue-addressing processes at a local level; and
- preparation and integration of the state programmes to support and develop the civil society.

The measures taken would enable within short timeframes the civil society organisations to build their capacities and to engage pro-actively in the process of democratic transformations in the country.

Formation of the executive authorities by the local self-government bodies, rather than its nomination from the vertical top will empower the public influencing the local authorities. Assumedly, a local self-government reform would enhance the authorities' responsibility and effectiveness locally. The latter factor provides a paramount encouragement to support the reform both by the civil society organisation and by public at large.

The major tasks faced by the civil society organisations at the period of reform preparation and implementation are:

- engaging in a constructive dialogue and interaction with the local authorities and mass media;
- public involvement in the decision-making process at a local level;
- outreach activities aimed at raising the public awareness and studying opinions on the reform and its implementation process, arranging public discussions over forthcoming/present changes and preventing situations giving rise to reform opposition;
- attraction through external or internal sponsors some additional material or financial resources for public initiative implementation and for rendering services to the public;
- pro-active involvement in drafting proposals to improve the available ones or to introduce new forms of public involvement in decision preparation and making at a local level; and
- creation of public monitoring mechanisms for the purpose of protecting basic rights and freedoms of the citizens, boosting officials' accountability and corruption prevention.

An analysis into the real or potential challenges affecting decision-making on the reform introduction and its further successful implementation indicates to the persistence in the Belarusian society of some serious obstacles and problematic aspects in the way to it.

For the time being, the process has been paused and still there is time to be used for a deeper and more profound preparation of the reform and the human potential needed for its implementation.

### 3.

## Preparation of the Institutional Transformations

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At the period of reform preparation, a large amount of work has to be done to address the tasks outlined in section 1 *Framework Approaches and Vectors Related to Reforming the LSG and Territorial Power Structure in Belarus* (please, refer to p. 15).

This part of the study is meant to present some crucial aspects pertaining to the preparation of institutional changes, viz.: preparation of the society for the reform, territorial power structure, territorial community model formation, power-sharing between the local self-government bodies and the state administration, financial de-centralisation and creating conditions for the development and enhancement of the civil society within the process of reform preparation and implementation.

#### Preparation of the society to the reform

Because the forthcoming reform affects the interests of the society at large, we should expect from it as a feedback a very proactive reaction and demand for an additional and more detailed information on the forthcoming reform.

The reform initiators and adherents must be ready to explain to the public in a compelling and professional way the reasons for and the essence of the imminent changes and the reform objectives, tasks, methods and inherent issue addressing mechanisms, as well as the expected reform outcomes. The

more accessible and comprehensible ways are used to bring the information to the public, the more support and, consequently, chances for its successful implementation, the reform would gain. The leading role in reform promotion is to be played, along with the experts and specialists in the areas of local self-government and territorial power structure, also by the deputies, representatives of the central and local authorities or civil society organisations, opinion leaders and mass media staff. To the reasonably practical extent, each one of the above groups should be approached for series of outreach meetings featuring some leading experts and specialists engaged in reform preparation.

The topics for discussion must be represented, along with the legal or technical reform aspects, also by issues related to reinterpretation of the state's role in administering the society and public responsibility for the state of local affairs or public readiness for self-organisation and for an energetic involvement in addressing issues of a local significance.

### **Territorial structure of public power**

The reform provides for a profound transformation of the territorial public power structure at the local or regional levels.

In Belarus, the local self-government bodies within the framework of the existing local self-government system are legally incompetent and, actually, fail to adhere to the local self-government essence. The right to a local self-government must go hand-in-hand with its realistic enjoyment and be unambiguously defined and entrenched in the legislation. The need for the creation of a legally competent and efficient local self-government, as well as a new system of state administration and territorial representative offices of the central national administration authorities at a local level inevitably translates into the necessity to change the territorial structure.

At the preparatory stage, for a systematic preparation of the territorial power structure reform the Ministry of Community and Territory Development should set up its relevant department/directorate, study the foreign countries' (Poland, Ukraine and Latvia) appropriate experiences, formulate framework approaches to the formation of a new administrative and territorial structure and work out the methodology for the formation of various types of territorial communities (*hramadas*), and perform their modelling with an analysis into the possible solution options. Likewise, *ad hoc* committees for the collection and analysis of the relevant information should be formed at the Region and District level as they exist at present.

### Formation criteria for the administrative and territorial units

An administrative and territorial unit should meet the following major requirements:

1. HR-related, infrastructural and financial capability to exercise their powers as defined in the legislation for an appropriate level of an administrative and territorial unit to the full extent.
2. Demographic data stability.
3. Absence within its boundaries of any other administrative and territorial units of the same level, which are under the jurisdiction of an administrative and territorial unit of the same level.
4. Territorial continuity of the administrative and territorial unit.
5. Availability on the territory of an administrative and territorial unit of a human settlement to perform the functions of its administrative centre.
6. A balance, as a rule, between the numbers of the public service consumers on the territory of an administrative and territorial unit and the budget institution load norms as specified in the laws in effect.

## Territorial community model formation

A critical part in the preparation of a new administrative and territorial structure is the territorial community model formation. It is assumed that as a result of the territorial power structure reform out of the present basic-level 128 administrative and territorial units and 1,171 primary ones (as of 01.01.2022) 160 to 200 territorial communities (*hramadas*) will be formed.

It remains to identify the framework approaches (whether the economic or social one) to the formation of the territorial community models. Besides, whereas earlier the principle decisions underlying the power structure referred to a spatial location of the authorities of a general competence (local administration and self-government bodies), the creation of real and viable local self-government bodies puts to the forefront the issues shifting the focus to the sector-related problem settlement. The spatial location of the territorial management belonging to multiple ministries and departments, such as education, healthcare, interior sector, emergency situations, environment protection, social welfare, pension fund, as well as judicial authorities will become a priority on the agenda.

Another crucial issue is the formation of a list of human settlements to be included in a territorial community (*hramada*). A territorial community (*hramada*) should include only the settlements with long-standing and stable economic, social or other relations to the administrative centre.

It is also paramount to make a correct decision on selecting an administrative centre for a territorial community (*hramada*). Some valid reasoning should be proposed to support the optimum nature of such a decision.

Within the process of territorial community (*hramada*) model formation, we should try to preserve the existing boundaries of the administrative and territorial units.

For a territorial community model formation, a special methodology should be worked out to account for the types of territorial communities (rural, town or city ones). The methodologies must also include a number of significant quantitative criteria of the territorial community model formation, like population number, area of the territory, maximum

accessibility time for the relevant services in emergency situations (fire brigade ambulances or police) transportation accessibility of the public service hubs and so on. Within the process of territorial community (*hramada*) model formation, we should try to preserve the existing boundaries of the administrative and territorial units.

### Power-sharing between the local self-government and state administration bodies

Usually, three competence types are singled out in the national administration system:

- state competence: enjoyed by the central authorities of the national administration and the local state administrations;
- local self-government competence: enjoyed by the territorial communities (*hramadas*) and by the local self-government bodies created by them; and
- delegated competence: powers transferred by the state administration authorities to the local self-government bodies.

The competences of the local self-government and state administration must be legislatively redistributed and entrenched. In order to define the competences of the local self-government bodies, as a preliminary step, several conditions should be analysed, under which powers may be assigned to the local self-government bodies, viz.:<sup>16</sup>

1. Demand of the relevant public services is ubiquitous and the service consumers are uniformly distributed across the territory.
2. Representative local self-government bodies with their subordinate executive authorities at the appropriate administrative and territorial level.

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<sup>16</sup> Ганущак Ю. І. Територіальна організація влади. Стан та напрямки змін / Юрій Ганущак. – К: Легальний статус, 2012. – 348 с. ISBN 978-966-8312-64-9

// Hanushchak, Y.I. The Territorial Power Structure. Transformation Status & Vectors / Yuriy Hanushchak. Kyiv: The Legal Status, 2012. – 348 pp. ISBN 978-966-8312-64-9

3. The services should be standardised, public service providing procedures set, clear requirements to the relevant public services' quality elaborated and a successful power exercising criteria and indicators set
4. Powers are relegated to the lowest level possible, where they are plausible and purposeful to be exercised, while taking into consideration the HR, financial and infrastructural potentials and resources needed to exercise the powers at this level.
5. The local self-government bodies have efficient tools for pursuing their local policies within the limits of any powers assigned.
6. The local self-government bodies are ready to exercise the powers granted to them, a feedback is in place between the state and the local self-government by establishing appropriate institutions and creating a consultation system between the state authorities and the local self-government bodies via their unions or associations.
7. An appropriate funding level is in place to implement the powers in the form of retaining a part of taxes and a support from the state to local self-government bodies that is based on objective criteria.
8. An efficient and formalised monitoring by the state administrations is in place over how the local self-government bodies comply with the Constitution and the laws in effect.
9. An adequate external monitoring system from the public is in place.

The state powers are transferred to the local self-government bodies based upon the relevant laws adopted. The power de-centralisation level should correspond to the ratio of two indicators: decision-making freedom enjoyed by the local self-government bodies and adequacy of their accountability for any decisions taken.

Within the reforming process, one of the very first steps at the transitional stage aimed at creating a real local self-government system provides for a return to the local Councils in Belarus of the executive and administrative bodies complete



with their competencies enjoyed by them at the moment of their return. The next step will be to analyse the current competences of the local Councils of Deputies and their executive/administrative bodies with the goal in mind to identify own competences of the local self-government, those enjoyed by the regional state administration and the delegated competences with their subsequent entrenchment in the legislation and their sharing in conformance with the laws in effect.

The regional/*kray* public administration is separated from the local self-government and created at the regional level, only, represents a general-competence authority and its activities are streamlined to discharge three functions:

- own ones: the powers as specified in the law to ensure the power authorities' functioning;
- monitoring ones: monitoring as to how the local self-government bodies comply with the legislation; and
- coordinating ones: coordination of the activities pursued by the territorial structures of the central state power bodies.

Proceeding from these functions, criteria can be set to delimit the regional state administration bodies and their structure. The regional state administration apparatus should include those subdivisions, which are responsible for a general power structure function in all the three public authority dimensions: regulatory, economic/financial and spatial ones. In such a manner, the mandatory subdivisions of the regional state administrations are the financial, economic, legal and spatial planning ones. Besides, it has to include also sectoral subdivisions, which perform monitoring over the local self-government bodies' activities and prepare relevant documents as a response measure within the framework of supervising legality and legitimacy of the local self-government bodies' activities.

The territorial bodies of the central state power authorities, which are not included in the regional state administration structure, should primarily include the structures responsible for safety and state security, i.e. security, defence and law enforcement agencies. The state inspections responsible for monitoring activities outside the scope transferred to the local self-government should also be reasonably referred here.

The regional state administrations play a coordinating role in

their respect.

All the other competence spheres of the state administration must be exercised within the framework of the regional state administrations.

At a local level, there is still a number of state functions dealing directly with the public. Therefore, the territorial community (*hramada*) level should likewise accommodate some standalone subdivisions or territorial representative offices of the central state power authorities, which discharge the following functions:

- public order enforcement – units of the Ministry of the Interior;
- exchequer – a department or a work post;
- hygienic and veterinary monitoring – a department or a work post;
- social security and labour protection – a department;
- emergency situation response – firefighting units with the Ministry for Emergency Situations;
- retirement benefit payments – pension fund departments;
- state act registration (referring to the self-government bodies, civil status or companies) – departments of the Ministry of Justice; and
- keeping the land cadastre and registration of real estate proprietary rights – departments of the State Committee for Property.<sup>17</sup>

## Financial de-centralisation

Financial de-centralisation is a pivotal tool to establish the local self-government bodies as independent and financially viable entities in the country's economy.

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<sup>17</sup> Ю.Ганущак. Реформа територіальної організації влади / [Ю. Ганущак – К.]; Швейцарсько-український проект «Підтримка децентралізації в Україні – DESPRO». – К.: ТОВ «СофіяА». – 2013. – 160 с  
// Y. Hanushchak. The Reform of the Territorial Power Structure / [Y. Hanushchak - Kyiv]; Swiss-Ukrainian Project *Support of De-centralisation in Ukraine* – DESPRO. Kyiv: SophiaA. – 2013. – 160 p.

Reforming the local finance system is a complicated process in any nation. Therefore, it is vital to develop an efficient system for use of the local budget resources. The objective of the local self-government reform is, primarily, to guarantee its ability to address all the local agenda issues independently at the expense of own resources.

The major tasks to be met within the framework of financial de-centralisation are:

- reviewing and drafting a list of the local self-government bodies' own and delegated powers;
- expanding the financial base of the local self-government bodies;
- transition to the system of ear-marked monetary transfers aimed at compensating for the local self-government expenditures as a result of their exercise of delegated powers; and
- putting in place an utmost transparency degree in using budgetary funds by the local self-government bodies.

De-centralisation of the budgetary financial resources provides for the below:<sup>18</sup>

- a change in the monetary transfer policies, which may not be based on the old Soviet principle “from each according to his ability, to each according to his needs;”
- providing to the local self-government bodies greater powers towards the development and implementation of various socio-economic development programmes; and
- changes in the fiscal system to streamline greater specific revenue receipts in favour of the local budgets.

Financial de-centralisation enables taking higher quality and more just decisions in terms of the local finance management. That being said, the administrative and territorial structure must be built in such a manner, so as to take into account in equal measure the public interests and to save budget funding, when providing the public benefits.

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<sup>18</sup> [Link](#) 

## Creation of conditions for the development and enhancement of the civil society organisations within the process of the local self-government reform preparation and implementation

To be noticed is that an accelerated implementation of the reform on the basis of applying administrative measures will fail to bring about success, which can only be guaranteed through an inclusive process supported by a motivated involvement on behalf of the public and business representatives.

For as long as Belarus exists as an independent state, public involvement in addressing issues at a local level and the civil society organisations' activities have never been seen as an extra resource for the local development.

The legislation on the direct people's rule forms in effect in Belarus formed between 1991 and 1995 has become by now obsolete and fails to address modern approaches, requirements or societal demands. Within the process of reform preparation it should be updated to ensure de-bureaucratisation, higher efficiency and energising public involvement in the decision-making process at a local level, as well as integration of new public involvement forms (for example, a public involvement budget, petitions, public engagement in developing the basic infrastructure elements and so on).

For a longer perspective, a relevant state programme will have to be prepared to promote the development of the people's rule forms and energising the public involvement within the decision-making process, which would foster:

- a lower welfare mentality level in the society;
- a more active operation by the territorial public self-government, local NGOs and public initiative groups (so called "courtyard initiatives") aimed at a sustainable local community development;
- the public acquire the knowledge and skills needed for preparation of competitive bids, share best practices and develop both domestic and international relations; and
- higher levels of confidence, interaction and dialogue culture between the local authorities and the public.

Within the reform process, the major activity vectors on behalf of the civil society organisations are:

- protection of citizens' rights and interests;
- informing on and drawing attention to the solution of problematic aspects;
- expert evaluations and consulting;
- innovation development and integration;
- providing services; and
- practising public monitoring.

As far as the existing prototypes for the local self-government institutions in present-day Belarus and in emigration are concerned, the following should be emphasized:

- the principles and norms contained in the European Charter of Local Self-Government provide a gauge for the European nations in the area of local self-government. As compared to the European Charter, the current Belarusian self-government model may be seen as a prototype, an initial and experimental model in need of its further development;
- local self-government is exercised in two forms: directly (through local elections, local referenda, via the bodies of territorial public self-government, public involvement in meetings, public discussions, complaints lodged by individuals and so on) and via the local self-government bodies (elected or other bodies entrusted with powers to address issues of local significance). To a certain extent, the direct people's rule forms also represent local self-government prototypes. Yet, as stressed already above, they are in need of a further improvement and development. At this very stage, a focus is necessary on creating proper conditions for a practical and efficient application of the existing prototypes, rather than on engineering new ones.

Foreign countries, like Poland, Lithuania or Georgia, also have legislatively entrenched direct people's rule forms as local self-government prototypes. The civil society organisations active in these countries, which syndicate Belarusians into

interest groups, such as religion, advocacy, culture, etc., are not and *a priori* may not serve as local self-government body prototypes featured by their specific tasks; nonetheless they may study the foreign experiences related to implementing the direct people's rule forms, as well as integrate it into their operations. Looking forward, their knowledge of the foreign best practices referred to local self-government functioning may come in handy for the local self-government reforms in Belarus.

**The need for setting up in the foreign lands by the Belarusian diaspora of new local self-government prototypes must be supported by some viable reasoning to be comprehended and accepted by the national authorities, because their legal entrenchment in the national legislation would be required.**

## 4. Institutional Transformations

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A large-scale reform of the local self-government and territorial power structure affects the interests of the society at large, changes the state's institutional foundations and dictates setting up new governmental and public institutes. Actually, the local self-government system put in place after the reform, by and large, will also represent a qualitatively new public authority institution.

The local self-government and territorial power structure reform is based on two crucial approaches: a practical integration with the public administration system of the subsidiarity principle and power de-centralisation. The result is that some significant institutional transformations will take place across the entire system of state administration and local self-government.

### Principle of subsidiarity

The principle of subsidiarity is believed to constitute a foundation of a modern democratic state's structure.

Subsidiarity (originating from the Latin *subsidiarius*, that is subsidiary, auxiliary, ancillary or additional) means an organisational and legal principle, under which tasks should be completed at the lowest possible level that is remote from the centre, where their completion is plausible and efficient.

The essence behind the subsidiarity principle is that a higher administration level must only deal with the issues, which may not be

solved at a lower level.

The subsidiarity principle, which defines a human being as the main subject for any activity, stipulates that other institutes should be formed as auxiliary ones in relation to her or his actions. Consequently, a rural council is to deal with something an individual along with her or his family cannot accomplish. In their turn, the district authorities should be seen in respect of the rural council and the regional authorities in respect of the district ones as auxiliary, or subsidiary.

The same principle also refers to the state and government. The state should discharge auxiliary functions in respect of all the institutions and entities operating under its auspices and serving the public interests. Institutions are “super-structured,” where smaller entities located closer to the citizen are unable of completing more complicated tasks.

The subsidiarity principle means abandoning the subjects’ hierarchical dependence. As a matter of fact, one cannot require that a “lower” unit should be subordinate to a “higher” one, if the latter must merely be auxiliary in respect of the “lower” one. The thesis has a fundamental significance in the organisation of the modern legal state.

In the areas of local self-government, the said principle enables drawing the power closer to the public and to encourage the public to completing public tasks, while, at the same time, justifying the state interference with the local affairs.

An important premise for the subsidiarity principle implementation is represented by an optimum territorial local self-government structure. What local self-government unit should be seen as the lowest one? What self-governed territorial unit system serves best the public interest? These or similar questions become paramount, when reforming the local self-government, in practical terms, in every country.

Under the conditions of a socio-economic crisis, the national administration system set up in conformance with the subsidiarity principles can really save financial resources, time and HR resources, and ensure a social interest balance.



## Centralisation and de-centralisation

Administration centralisation means management concentration in one centre, in one pair of hands and in one place; and creation of a hierarchical administration structure with prevailing vertical relations, that being said, the upper levels have determining decision-making powers, while the decisions themselves are mandatory for the lower levels.

Administrative centralisation, in actual terms, puts an emphasis on a managerial system's insularity, when it is built from a single centre from top downward with adherence to rigid principles of administration unity and strictness. The specific traits of centralisation are represented by a growing level number in the managerial hierarchy, concentration of most decisions at the upper administrative levels and a limited participation in decision-making on behalf of the lower-level authorities. Centralisation in state administration is supposed to serve as an organising factor in the state power bodies' function and to streamline their activities towards pursuing a single state politics.

De-centralisation is a way to structure the state administration in a way that the lower authorities are not subordinate to the higher ones hierarchically, but complete the tasks entrusted to them by law independently of each other, only under supervision in respect of the reign of law criterion.

The following principles are applied to the state administration system:

- individual administrative subjects have clearly defined powers;
- the powers are either specified, or delegated from other authorities in a legal way and are enjoyed independently; and
- supervision over the decentralised subjects from the state is limited and relates to observance of the reign of law, when completing any tasks. On the one hand, supervision is intended to guarantee state unity, while, on the other hand, to guarantee that decentralised subjects are free and autonomous.

De-centralisation provides for independence of a lower authority, i.e. no higher authority may take decisions on the lower authority's personnel chart or issue instructions to it as to how to address the issues included in the latter's competences; it may only interfere with the affairs administered by the lower body in the cases as specified in law. The most important form of decentralised administration is local self-government, i.e. exercise of the state power by a territorial public community, which includes all the residents of a given territory.

Within the process of the de-centralisation, the reform should be focused on five vectors of state power demopolisation:

1. Political sphere, i.e. the political and legal position of the local authorities in the state structures, the political influence force and weight of these authorities, available mechanisms to reach their goals, ability to defend their interests and the like.
2. The public function sphere, i.e. power and accountability scope of the local authorities, as well as the decision-making freedom extent in applying any legal or economic tools.
3. The sphere of property and local economy, i.e. the scope of property owned by the local authorities and freedom of its use, scale of influence on the local economy, freedom of decision-making on the directions of local development and the availability of support tools.
4. The public finance sphere, i.e. the local finance and freedom of the financial domain.
5. The administrative sphere, i.e., primarily: freedom to select methods to achieve own tasks, local administration structure, to recruit employees, own HR policies and HR development.

De-centralisation should also be differentiated from de-concentration. De-centralisation is a transfer of power and resources between the autonomous administration systems (the state power body system and the local self-government body system), whereas de-concentration is about a transfer of powers downwards within the framework of the same administration system. The "de-concentrated" powers may at any moment in time be clawed back. Responsibility for their proper exercise remain in control of the same centre, which assigned the completion of certain tasks to its subordinate unit to boost

efficiency.

In case of a real de-centralisation the situation looks differently. The power and responsibility transfer in this case happens not as a result of a unilateral decisions, but as a consequence of a legislative modification or following the conclusion of a bilateral agreement covering the transfer of powers along with the responsibility for the completion of certain tasks. The reversible relocation of powers requires new alterations in the legislation or to the relevant bilateral agreement.

It is obvious that in case of the administrative reforms we deal with de-centralisation, rather than with de-concentration. De-centralisation modifies the state's institutional foundations, while de-concentration only serves as a way to complete some tasks, which is the crucial difference between de-centralisation and de-concentration.

## Ministry of Community and Territory Development

Efforts exerted by multiple ministries, department and their territorial representative offices will be required for the reform implementation. Besides, to prepare the reform and to coordinate actions on the basis of adopted laws, a national administration body with a high legal managerial status will have to be created.

To serve the purpose, we suggest setting up the Ministry of Community and Territory Development as a central state administration authority to run the reform of the local self-government and territorial power structure for a legislative, scientific and methodological support of the reform and to discharge coordination, monitoring and supervision functions within the process of reform implementation.

The Ministry of Community and Territory Development is to act as an authority in the central executive power bodies, which pastes and implements the state-initiated local and regional policies, state policies in the sphere of developing the local self-government, territorial power structure and administrative and territorial structure, spatial territory planning, as well as the state policies in the areas of housing and utility services and in the area of household waste handling.

## A territorial community (*hramada*)

A special place and a vital role in the new local self-government system belongs to the territorial community (*hramada*).

Most European nations, like Poland, Germany, Ukraine, Sweden, France, Switzerland and so on, have the notion of a “territorial community of citizens” (*gmina, obshchina, hromada, commune or canton and hramada* as its Belarusian version) that enjoys a legal status. The legislation of the Republic of Belarus fails to contain such a notion. Instead, the term “administrative and territorial unit” is used (for example, budget of an administrative and territorial unit or property of an administrative and territorial unit). It introduces a semantic ambiguity and inadequately reflects the essence both of the local self-government and public self-organisation.

The result is that it is next to impossible to determine what the local self-government subject is: whether a territorial community of citizens (*hramada*) or a depersonalised administrative and territorial unit, or else for whom, for example, the Minsk District Council of Deputies works and whom it represents: an administrative and territorial unit or a territorial community of the citizens residing on the territory of Minsk District. The lack of relations between the citizens and the Council elected by them is emphatic.

The citizens are not enabled to organise themselves into territorial communities or to reflect through a statute of a territorial community of citizens (*hramada*) the peculiarities, specific features or local self-government organisation traditions, because the practice of having statutes (except for Minsk City) is missing. Entrenchment in the Belarusian legislation of the legal status of a territorial community (*hramada*) would correspond to the international practice in place and the historic traditions of the Belarusian people alike: the community law provided a basis for the Magdeburg Rights in the cities and towns of the Grand Duchy Lithuanian (or Belarus in the Middle Ages).

A territorial community (*hramada*) means the dwellers united by permanent residence and shared interests within the

boundaries of a village, town or city, which serve as independent administrative and territorial units, or a voluntary association of people residing in several villages, towns or cities, which have a single administrative centre; and a territorial community (*hramada*) is a basic territorial unit of the local self-government, a primary subject/object of power and administration at a local level.

A mandatory condition for the formation of a territorial community (*hramada*) is its legal capacity – a possible exercise of the powers entrusted to it within the limits prescribed by law.

From the viewpoint of understanding the place and role of a territorial community in the local self-government system, three aspects should be singled out: firstly, it is a basic administrative and territorial unit; secondly, it is an organisational form of the local power; and, thirdly, it is a subject of civil law relations and an economic subject.

The main features of a territorial community are:

1. territorial one: a joint residence of persons/dwellers, who make part of the community on a certain territory (within the limits of a certain administrative and territorial unit);
2. integrative one: a territorial community arises on the basis of uniting all the dwellers residing on a certain territory irrespective of the fact, whether they are citizens of the given country, i.e. members of a territorial community may be represented by citizens of the given state, as well as by foreign nationals or persons without a nationality, who reside permanently on a certain territory. It is possible to include in a territorial community refugees and displaced persons.
3. intellectual one: the basis for a territorial community is provided by its residents' shared interests, which have a specific nature and are expressed as a wide range of systemic individual and territory-specific relations arising among them (the major activity object of a territorial community is represented by issues of a local significance);
4. proprietary one: a territorial community is a subject of communal property law (it owns immovable and movable assets, local budget revenues, other resources, lands and natural resources owned by the relevant territorial communities);

5. fiscal one: members of a territorial community are payers of local taxes and dues; and
6. self-governmental one: a territorial community is entitled to engage in local self-government.<sup>19</sup>

A practical interest is drawn towards determining a role of a territorial community in the enjoyment of the so-called municipal rights of a person. These rights only arise for a subject, who is a member of a territorial group of persons and are only enjoyed in the areas of local self-government.

In a loose sense, the municipal rights of a person are based on an “interest triad” arising in the area of local self-government:

- interest of a territory;
- interest of a territorial community; and
- interest of a specific resident, who is a member of such a community.

Appearance of the interest of the territory, where a person representing an integral part of the territorial community functions, is directly linked at present to the dominating processes of “territory self-reinvention” caused by state administration de-centralisation.

The interests of a territorial community, on the other hand, arise and are revealed on the basis of an interest totality of its individual member (shared interests, primarily, in meeting social, municipal, utility, local culturological and other needs) and in an individualised interest of a specific person making part of a territorial community (personal interests revealed primarily in the area of communication relations at a local level and, by implication, personal self-fulfilment within the framework of a territorial community).

Finally, interests of a specific person making part of a territorial community represent her or his municipal right in a strict sense, which arise, when she or he seeks to achieve all of her or his personal life aspirations. When achieving them, a specific resident acts as a subject/object of local self-government and, in doing so, concentrates its positive democratic potential.

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<sup>19</sup> <sup>19</sup> Муніципальне право України: підручник / В. Ф. Погорілко, О. Ф. Фрицький, М. О. Баймуратов [та ін.]; за ред. д. В. Ф. Погорілка, О. Ф. Фрицького. – К.: Юрінком Інтер, 2006. – С. 211.

// The Municipal Law of Ukraine: Textbook / V.F. Pohorilko, O.F. Frytskyi, M.O. Baimuratov [et al.]; edited by V.F. Pohorilko and O.F. Frytskyi. – Kyiv: Yurincom Inter 2006. – p. 211.

In such a manner, a territorial community acts as a natural and only social formation in existence within the spatial state boundaries, which provides a framework to serve the natural daily needs and interests of a systemic nature among residents of specific territories (the municipal rights of a person).

Such a reciprocal consideration for the entire interest totality arising at the level of the local self-government and expressed in the form of the municipal rights of a person, with the inherent reciprocal compromises and harmonisation, provide a guarantee for the existence and function of the local self-government system with tolerance and protectionism extended to it from the central state power.

The territorial communities are legal entities and primary power and management subjects at a local level. A territorial community is a founder of a system of procedural and institutional local self-government subjects (council chairperson, local community (*hramada*) council chairperson, community council's executive bodies, territorial self-government bodies or elders), which/who exercise the powers granted by law in the interest of the community. A territorial community owns the communal property and, in its name and on its behalf, grants the right to manage it to the local self-government bodies. Therefore, the appearance in the legal relationship system of a new social and legal institution represented by a territorial community is crucial for the development of local self-government.

Formation of the territorial communities is proposed to be carried out by fragmentation of the basic-level administrative and territorial units (districts) and by enlargement of the primary-level administrative and territorial units – rural, town and city (district-subordinated) councils. According to some preliminary estimates, 160 to 200 territorial communities created in such a manner will form a basic level of local self-government to be the closest one to the public.

The formation process of territorial communities (*hramadas*) must be regulated under a separate law. Community formation by unification/merger should be done in conformance with a methodology elaborated and approved by the government and



subject to an obligatory contribution by the public. A mandatory pre-requisite to model the territorial communities is provided by assessing the potential resource opportunities of a territorial community (*hramada*) for its economic and social development and a possible provision of quality services to the public.

The human settlements included in a united territorial community will have their residents' the right to a local self-government and to receive services ensured by elders elected by them.

## Elder

In Belarus, the primary-level administrative and territorial units have the elder institution in the form of a single-person territorial public self-government. Her or his major task is reduced, in actual terms, to serving as a connecting link between a rural council and its residents. Neither she or he has any administrative powers or financial resources, the work being done *pro bono* with only a modest remuneration being paid as a bonus.

The elder status, within the framework of the reform, is proposed to be drastically upgraded. Elder candidacies are to be nominated following the results of public discussions, local meetings and other forms of public consultations. An elder is to be appointed under a decision passed by the territorial community Council for the term in office of the community Council and to act on a permanent basis as a staff member of the relevant Council. An elder will be authorised by the appropriate Council to act in the interest of a relevant elder precinct's residents.

An elder takes part in plenary meetings of the community Council and its executive committee with deliberative functions but no vote and enjoys a guaranteed right to speak at the meetings on any issues affecting the interests of a relevant elder precinct's residents. An elder, within the limits of an elder precinct:

- participates in implementing the decisions passed by the community Council and exercises monitoring over how they are implemented;
- in conformance with a decision passed Community Council, should provide administrative services to the



residents;

- gets involved in preparing proposals to the draft budget as far as programme funding on the jurisdictional territory is concerned;
- takes part in drafting decisions dealing with the community's communal property and its use on the jurisdictional territory;
- exercises monitoring of the municipal improvement condition;
- promotes the formation and activity of the territorial public self-government bodies and public involvement in addressing issues of local significance through the forms of the direct people's rule; and
- exercises other powers within the framework of the legislation in effect.

The elder precinct borders should be set under the Community Council's decisions. The elder precincts are supposed to cover at least 500 residents. The total number of proposed rural elder precincts could make approximately 4,000, while the number of elders (as of mid-2018) in Belarus accounted for 23,695 persons.<sup>20</sup>

## Staff of the local self-government bodies

Since the local self-government bodies are not included in the state power bodies' system, employees of the local self-government bodies are not deemed to be civil servants.

Service with the local self-government bodies is an intricate social and legal institution and demonstrates all the signs and properties intrinsic to service in general and to each of its types individually.

However, there are a few specific signs of local self-

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<sup>20</sup> Василевич Г. А. Актуальные направления развития местного самоуправления в Республике Беларусь в контексте Европейской хартии местного самоуправления: 3 // Известия Национальной академии наук Беларуси. Серия гуманитарных наук. 2020. Vol. 65, № 3. P. 355-366. <https://doi.org/10.29235/2524-2369-2020-65-3-355-366>  
// Vasilevich G.A. Momentous Development Directions of the Local self-government in the Republic of Belarus in the Context of the European Charter of Local Self-Government: 3 // Bulletin of the National Academy of Sciences of Belarus. Humanities Series. 2020. Vol. 65, № 3. Pp. 355-366. <https://doi.org/10.29235/2524-2369-2020-65-3-355-366>

government service: (1) it is established and functions in the areas of public authority and is featured by a public legal nature; (2) it has specific tasks related to ensure the local self-government powers; and (3) has a definite continuity with the civil service.<sup>21</sup>

The legal, organisational, financial and social conditions for an enjoyment by the Belarusian nationals of their right to serve with the local self-government bodies, the general principles governing the activities by the local self-government officials, their legal status and the procedures or legal guarantees related to their service with the local self-government authorities are supposed to be regulated in the relevant legislative act.

## Supervision and monitoring over the activities pursued by the local self-government bodies and officials

The fact that the self-government bodies are state authorities enables the state to interfere comprehensively with their operations, also by way of supervision and monitoring of their activities.

At present, the function is based on the norms of the Constitution of the Republic of Belarus, in conformance with which the supervisory functions over a strict and homogeneous implementations of laws, edicts or other regulatory legal acts by the local executive and administrative authorities are entrusted to the prosecution service represented by the Prosecutor General and her/his subordinate prosecutors (please, refer to Art. 125 of the Constitution), while the functions of state monitoring over how the local and administrative authorities spend the Republic's budget, use the state property and implement the enactments passed by the president, parliament, government and other state authorities regulating the state property, economic, financial or taxation relations are entrusted to the Committee for State Control (please, refer to Art. 129).

Besides, within the framework of monitoring the activity of the subordinate state authorities by the superior ones, “any

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<sup>21</sup> Москалев А. В. Муниципальная служба: понятие, признаки, принципы

☞/ Jurvestnik.psu.ru [Электронный ресурс]. [Link](#)

// Moskalev, A.V. The Municipal Service: Notion, Signs and Principles / Jurvestnik.psu.ru [An electronic resource].

decisions passed by the local Councils of Deputies that are not in compliance with the legislation shall be revoked by the superior representative authorities” (please, refer to Part 2 in Art. 122 of the Constitution), while “any decisions passed by the local executive and administrative authorities that are not in compliance with the legislation shall be revoked by the appropriate Councils of Deputies, superior executive and administrative authorities or else by president of the Republic of Belarus” (please, refer to Part 3 in Art. of the 122 Constitution).

Besides, the Constitution, within the framework of judicial monitoring, provides that “any decisions passed by the local Councils of Deputies or by the executive and administrative authorities, which limit or infringe upon the rights, freedoms or legitimate interests of the public, as well as in other cases as specified by the laws in effect, may be appealed against in a court of justice” (please, refer to Part 4 in Art. 122 of the Constitution).

A large-scale reform of the local self-government in the Republic of Belarus will require a drastic change in the existing approaches to addressing the issues of state supervision and monitoring in respect of the diverse activities pursued by the local self-government bodies and their officials within the process of drafting, making and implementing decisions of a local significance.

Supervision/monitoring over the activities pursued by the local self-government bodies and officials is a major function of the state power. They are directly linked to the arrangements leading to legal norm implementation, to enjoyment by the legal relation subjects of their rights and responsibilities and to the protection of human rights and freedoms the public enjoy. They are intended to put in place an efficient function of the state authorities and the local self-government bodies and officials.<sup>22</sup>

The state power authorities are not entitled to interfere directly with the local self-government bodies’ operations and the state power authorities are not entitled to monitor the expediency of any activities the local self-government bodies pursue within the framework of exercising their own powers.

However, the state power authorities are entitled to interfere with the activities by local self-government bodies in case the

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<sup>22</sup> [Link](#)

latter violate the rules provided for exercise of individual powers delegated by the state.

Administrative monitoring represents a special activity type performed by the state authorities and conducted by the state administration authorities to verify the reign of law, actions/omissions or decisions passed by the local self-government bodies or officials in the areas of addressing issues of local significance and exercising the delegated state powers, only.

Inasmuch as the monitoring limits in some degree the local self-government independence, when conducting it, the principle of proportion should be observed in administrative monitoring of the local self-government bodies' activities, as declared in Art. 8 of the European Charter of Local Self-Government. Its forms, methods, mechanisms and procedures may not violate the guarantees of local self-government independence enshrined in the national legislation.

Supervision and monitoring over the local self-government bodies' activities shall be carried out to meet the following goals:

- ensuring compliance of the local self-government bodies' activities with the legislative requirements;
- prevention and thwarting of administrative offence committed by the local self-government bodies or officials;
- redress of any legal norms violated by the authorities or their officials in respect of any rights or legitimate interests of individuals, entities or the state; and
- providing assistance to the local self-government bodies in the completion of tasks in their own competence, or else any tasks delegated to them by the state authorities.

The system pertinent to the exercise of supervision and monitoring in the areas of local self-government has, as a rule, the following shape:

- supervision and monitoring of the local self-government bodies or officials on behalf of the general national state authorities or any territorial formations thereof;

- judicial monitoring of the local self-government bodies or officials;
- internal monitoring of the local self-government bodies or officials on behalf of their own monitoring committees; and
- non-governmental monitoring of the local self-government bodies or officials on behalf of the civil society elements.

### Supervision and monitoring on behalf of the general state authorities or territorial formations thereof

The authorised state bodies, like prosecution office bodies and so on, shall exercise supervision over a strict and homogeneous implementation by the local self-government bodies or officials of the Constitution and the laws in effect, as well as over the legality of any own regulatory legal enactments (incl. statutes, regulations and so on) adopted by the local bodies.

Any enactments passed by the local self-government bodies or officials, if failing to comply with the Constitution and the laws in effect, as well as with their own statutes or regulations, shall be deemed illegal by judicial procedure.

The state administrations and other territorial formations of the state authorities, within the bounds of their competences, shall monitor exercise by the local self-government bodies or officials of any powers delegated to them by the state authorities in the areas of proprietary, financial and taxation relations, as well as how the state standards and other mandatory requirements are complied with.

In case of a failure to comply with the legislation in effect or adopting a legal enactment contradicting the legislation, the state authorities and their territorial formations engaged in supervision and monitoring over local self-government bodies' activities are entitled to suggest application of legal (incl. constitutional) accountability measures to the local self-government bodies' officials and to the local self-government bodies themselves.

### Judicial monitoring local self-government bodies

The judicial monitoring over the local self-government bodies' activities is exercised by the courts of justice in the framework of constitutional, civil, penal and administrative proceedings.

The Constitutional Court is entitled to evaluate the activities of a local self-government body as to their compliance with the Constitution, as well as to assess the necessary constitutional validity of any regulatory legal acts adopted by it.

In case of gross violations by a local self-government body of the legislation in effect, the Constitutional Court is entitled to submit to the parliament its opinions to serve as a basis for an early termination of powers of the local self-government body through its dissolution.

In case of a failure to comply with the Constitution and other legislative enactments by the regulatory legal acts adopted by a local self-government body, the said local acts may be declared as nil and void and abrogated in full or in part since the date, on which the act was adopted or since the date, on which the Constitutional Court passed its ruling.

A court of general jurisdiction or an economic court are entitled to assess the reign of law in respect of non-regulatory/individual legal acts by a local self-government body within the process of penal, administrative, civil or economic case hearings.

In case the local legal acts fail to comply with the laws in effect, the said acts may be declared as nil and void and abrogated in full or in part since the date, on which the act was adopted or since the date, on which the relevant court of general jurisdiction or the economic court issued its ruling.

### **Internal monitoring by the local self-government bodies**

Internal monitoring within the local self-government system is conducted by the Monitoring Committee set up by the relevant local self-government body for the purpose of giving assessments as to compliance with the local self-government statute and the local authority regulations, as well as for financial audits and inspecting the local budget finance and to monitor the efficiency

of communal property use.

The Monitoring Committee reports to a local self-government body and is subordinate to a local self-government body; however, the Committee itself and its elected members receive independence guarantees in their activities for the entire term in office.

The audit, inspection or verification results are submitted by the Monitoring Committee to the local self-government body's session. In case any violations on behalf of the local self-government bodies' officials are identified, the Monitoring Committee shall be entitled to suggest to the local self-government body's session applying disciplinary measures to the said persons and to raise the issue of their professional fitness.

In case it is deemed necessary to apply to the local self-government bodies' officials any administrative, penal or civil law measures, the Monitoring Committee is entitled to liaise with the bodies of the state constitutional or financial monitoring and with the courts of justice or prosecution authorities.

### **Non-governmental monitoring on behalf of the civil society elements**

Monitoring over the activities pursued by the local self-government bodies and their officials on behalf of the civil society elements must be directly entrenched in law. Such a kind of monitoring may be exercised by the territorial community (*hramada*), citizens or their groups, territorial public self-government authorities, political parties, public associations, trade unions, team-spirited workforce, mass media and the like.

Monitoring on behalf of the civil society elements may be performed in the following direct democracy forms:

- public involvement in voting for the local self-government bodies and their officials;
- public involvement in local referenda;
- attending by citizens or civil society elements' representatives sessions and meetings of the local self-government with deliberative functions but no vote;



- involvement by citizens and civil society elements in discussions over draft legal acts;
- involvement by citizens and civil society elements in public discussions;
- local meetings and rallies with an involvement of the local self-government bodies' representatives;
- meetings with deputies;
- involvement in report campaigns deputies conduct for their voters;
- public opinion polls and public surveys;
- citizens' grievances addressed to the local self-government bodies and officials;
- drafting hard-copy or electronic petitions;
- discussions organised in mass media;
- arranging an initiative around the adoption of a legal act;
- holding mass-scale events; and
- other forms compliant with the laws in effect.

In case any violations committed on behalf of the local self-government bodies' officials are identified, the territorial community (*hramada*), citizens or their groups, territorial public self-government authorities, political parties, public associations, trade unions, team-spirited workforce, mass media and the like shall be entitled to suggest to the local self-government body's session applying disciplinary measures to the said persons and to raise the issue of their professional fitness.

In case it is deemed necessary to apply to the local self-government bodies' officials any administrative, penal or civil law measures, the territorial community (*hramada*), citizens or their groups, territorial public self-government authorities, political parties, public associations, trade unions, team-spirited workforce, mass media and the like shall be entitled to seek assistance from the state supervision and monitoring authorities or any other law-enforcement institutions, incl. the courts of justice.



When building a system of supervision and monitoring over the activities pursued by the local self-government bodies or officials, we should proceed from the premise that the relationship between the state authorities and the local self-government bodies must rely on the principles fixed in the European Charter of Local Self-Government (Section 3 of Art. 8): *“Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.”* In such a manner, the interference degree by a supervisory body should be proportionate to the importance of interest to be protected by the intervention.

### Administrative court

The administrative courts that are in place at present in the judicial system of the Republic of Belarus are entitled to settling administrative disputes (non-proprietary-nature disputes, such as on competences, enjoyment of rights and freedoms or on entrusting and performing duties) in the domain of local self-government or state administration, which arise between the state authorities and the local self-government bodies, as well as between the local self-government bodies and the citizens/their associations, while being guided by the principles of administrative justice pursuant to conducting the administrative proceedings, which are non-existent at this moment in time.

The administrative court does not assess a disputed administrative act or any actions/omissions by officials from the viewpoint of political or economic expediency. The administrative court identifies the fact of violating a law or another legal enactment or exceeding by a state administration authority or by a local self-government body and/or their officials any of their competences.

In case a legal act does not comply with the effective legislation, the said act may be declared as nil and void and abrogated in full or in part either since the date of its adoption or since the date, on which the ruling was passed by the relevant administrative court.

## Higher inclusivity of public involvement within the reform process reform and in developing the territorial communities (*hramadas*)

The most crucial transformation moderated by the reform of the local self-government and territorial power structure is a public mentality transformation with a transition from a passive sitting-on-the-fence condition to that of pro-active actions.

Pro-activity on behalf of the members of a territorial community (*hramada*) may constitute a solid resource and social capital within the process of reform promotion, and, the other way around, public passivity might hinder the process. At present, the importance of public involvement in addressing issues at a local level and the prospects of energising and motivating the public initiatives as an extra resource of the local development are underestimated by the central and local authorities alike.

A serious challenge both for the local authorities and the civil society organisations or citizens is a low interaction and dialogue culture level. The challenge has been put in place by the central authorities deliberately, which fact gives hopes for a positive situation change following the power transition.

Since the transformation process will take a relatively long period of time, it would be practicable to set up with the territorial communities (*hramadas*) formed, instead of the current ideological departments, departments for public relations with an integration of modern forms of public communication.

It would foster both a better public communication process and involvement of the public itself in the problem-solving process at a local level. It is exactly the local level that covers a wide range of issues and problems related to the citizens' daily livelihoods. Besides, the local level is more accessible to the public, and the challenges at this level are more specific, visible and momentous for the public and, given proper arrangements and contribution on behalf of the local authorities, the citizens can address them all on themselves.

As stated above, a thorough analysis must be conducted and the existing forms of direct people's rule updated to achieve their and de-bureaucratisation and to energise and boost efficiency, and motivate the public for an engagement within the process of promoting the reform and addressing issues at a local level. Besides, it is proposed to integrate (possibly, through the community (*hramada*) statutes, new forms of the direct people's rule, viz.:

petitions and public engagement budgets.

The idea of introducing the institution of commissioner for human rights/ombudsman at the level of a territorial community (*hramada*) for the purpose of protecting human rights and freedoms deserves a special emphasis. A community (*hramada*) ombudsman could handle grievances from the public and provide counselling on the relevant issues to the local self-government officials or participate in resolving conflicts.

The experiences accumulated in some countries and associated with creating for the period of transformation and reforms special public hubs for the purpose of establishing a positive interaction between the residents and the local self-government bodies deserves a serious consideration. The public hubs used to be set up around libraries or community centres and promoted the formation of interest groups, as well as were instrumental in public consultations.

## Changes to be introduced for an implementation of European Charter of Local Self-Government provisions

The European Charter of Local Self-Government was adopted by the Congress of Local and Regional Authorities of the Council of Europe on the 15<sup>th</sup> of October 1985. The document was signed and ratified by all the 47 member states of the Council of Europe.

The European Charter of Local Self-Government is an extra-national legal instrument, which represents an outcome of a whole range of initiatives and many years of activity within the framework of the Council of Europe. The Charter provides a major source of municipal law in the European countries that follow the path towards the local self-government development in present-day Europe. To follow the notions and principles included in the European Charter of Local Self-Government provides a pre-condition for an accession of a state into the Council of Europe.

A Party willing to join the European Charter of Local Self-Government<sup>23</sup> is required to accept at least 20 out of 30 sections of the Charter's Part I, including at least 10 out of the "mandatory

core” comprised of 14 major principles. The “mandatory core” is made up of the following paragraphs:

- Article 2
- Article 3, paras 1 and 2
- Article 4, paras 1, 2 and 4
- Article 5
- Article 7, para 1
- Article 8, para 2
- Article 9, paras 1, 2 and 3
- Article 10, para 1
- Article 11

That being said, inasmuch as compliance with all the Charter provisions remains the final objective, the Parties thereto are specifically enabled to add ever new commitments, when and if it becomes a possibility.

Typically, a Party interested in accessing the Charter, conducts an analysis into its current legislation to assess, whether it adheres to the Charter principles and norms, and, proceeding from the findings achieved and, while taking into account the available real opportunities, resources and prospects, selects at least 20 paras out of 30 (their total number) in the Charter’s Part I and commits itself to complying with them.

The Republic of Belarus does not have a formal document outlining the results of an analysis into the current legislation as to its compliance with the Charter principles and norms available in the publicly accessible sources, which fact does not preclude its availability.

There is an analysis performed in 2010<sup>24</sup> by various authors representing the expert community. In 2018 the expert community performed such an analysis repeatedly (for its outcomes, please, refer to Table 1). The analysis results coincided, inasmuch as the alterations and amendments introduced to the legislation

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<sup>24</sup> [Link](#)

within the relevant period had no significant influence on the effective norms. The analysis findings are as follows: out of the 30 paras 7 paras comply in full with the European Charter norms; 10 do so in part and 13 fail to do so, incl. 3 in compliance, 8 in partial compliance and 3 failing to comply from among the “mandatory core.”

It is assumed that following the results of the reform implementation 11 out of the 14 “mandatory core” paras will be enshrined in legislation and fulfilled in conformance with the requirements of the European Charter principles and norms; and 22 paras out of their total number (30 paras) will follow this way.

Part II of the Charter, Art. 12, para 1: “Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs”:

*Table 1. Comparison of the Belarusian legislation PE with the principles and norms of the European Charter of Local Self-Government (2018)*

| Mandatory Paras    |            |             |           | Optional Paras     |            |             |           |
|--------------------|------------|-------------|-----------|--------------------|------------|-------------|-----------|
| Art. & para #      | Full comp. | Part. comp. | Non-comp. | Art. & para #      | Full comp. | Part. comp. | Non-comp. |
| Article 2          |            |             | +         | Article 4, para 3  |            |             | +         |
| Article 3, para 1  |            |             | +         | Article 4, para 5  |            |             | +         |
| Article 3, para 2  |            | +           |           | Article 4, para 6  |            | +           |           |
| Article 4, para 1  |            | +           |           | Article 6, para 1  |            |             | +         |
| Article 4, para 2  |            |             | +         | Article 6, para 2  |            |             | +         |
| Article 4, para 4  |            | +           |           | Article 7, para 2  | +          |             |           |
| Article 5          | +          |             |           | Article 7, para 3  | +          |             |           |
| Article 7, para 1  | +          |             |           | Article 8, para 1  | +          |             |           |
| Article 8, para 2  |            | +           |           | Article 8, para 3  |            |             | +         |
| Article 9, para 1  |            | +           |           | Article 9, para 4  |            |             | +         |
| Article 9, para 2  |            | +           |           | Article 9, para 5  |            |             | +         |
| Article 9, para 3  |            | +           |           | Article 9, para 6  |            |             | +         |
| Article 10, para 1 | +          |             |           | Article 9, para 7  |            |             | +         |
| Article 11         |            | +           |           | Article 9, para 8  |            |             | +         |
|                    |            |             |           | Article 10, para 2 |            | +           |           |
|                    |            |             |           | Article 10, para 3 | +          |             |           |
| Total:             | 3          | 8           | 3         | Total:             | 4          | 2           | 10        |

## 5.

# Supplementary Reforms

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## Sectoral reforms in the matters of local significance in the Republic of Belarus

A reform of the local self-government provides for putting through a whole range of supplementary or parallel reforms of a sectoral nature in those spheres of citizens' lives, which are directly related to addressing daily and priority issues for every human being: public health service and medical aid, education and upbringing, social assistance and security, operation of the housing and utilities infrastructure (water supply and sanitation, lighting, heating, gas supply, waste handling, etc.).

The problem of providing quality services to the public in the territorial communities in the said spheres is directly linked to the lack of a real local self-government as a result of a centralised administration and nationalised activities of the authorities vested with power and their subordinate entities.

## A reform of the public health service and in the medical assistance system

The objective to be pursued by the reform will be to create an efficient healthcare system in Belarus oriented toward human health and society needs, which, in the long run, should lead to the following:

- an improved accessibility of healthcare and pharmaceutical services;
- an extended range and higher quality of healthcare services;
- an improved public health and hygienic well-being;
- higher incomes of the healthcare system personnel; and
- higher expenditures to fund the public healthcare and medical assistance system along with their optimisation.

In this respect, the following major vectors can be proposed for the public healthcare system reform implementation in the Republic of Belarus:

1. Transformation of the public healthcare system's administration and funding, which provides for entrusting to the local authorities on the basis of administration de-centralisation principle the competences related to providing medical services by their subordinate healthcare institutions, as well as assigning the healthcare facilities to a specific territorial level in conformance with the subsidiarity principle, provided the prerequisite financial resources are allocated.

2. Optimisation in the country of the public healthcare system, which provides for:

- removal of the state healthcare administration authorities, which discharge duplicating functions and raising the physicians and healthcare personnel's salaries; and

- development of the hospital precinct concept to create territories, where a full set of public healthcare facilities is up and running to provide to the public primary, specialised, high-tech, medico-social and palliative care.

3. A lower burden (incl. the bureaucratic one) on the public healthcare system through a reduction in superfluous documents and personnel duties, e-health development, remote communications between a healthcare and a patient and changing the healthcare institutions' working hours in conformance with the public wishes expressed;

4. Development of the private healthcare sector through lowering the bureaucratic barriers to enter the medical service market, providing equal rights to the private medical centres on par with the state-run healthcare facilities and introducing the licensing system for the healthcare personnel.

5. Introduction of the “money follows the patient” principle for the implementation by a citizen of her or his right to choose a healthcare facility or physician, while developing, at the same time, competition among the healthcare institutions related to providing quality medical services.

6. Transformation of the in-patient/hospital public healthcare institutions through a reduction in an excessive hospital bed number that leads to unjustified expenses, revision of the existing treatment protocols from the viewpoint of treatment efficiency and economic feasibility, higher comfort of hospital stays and promotion of private clinic creation.

7. Enhancement of the extramural/out-patient healthcare institution level through the development of the out-patient clinic, ambulatory clinic or rural health post network and technical facilities by promoting their better public accessibility, staffing, modern technical equipment and vehicles. Development of new medical aid forms (out-patient clinic branches or healthcare offices) in new urban housing development areas and the refinement of the family doctor concept.

8. A higher operational transparency of the public healthcare system by way of integrating the Belarusian healthcare system with the international medical, scientific and educational



environment and a practical implementation of the public monitoring procedures in respect of the basic-level territorial public healthcare institutions.

9. Introduction and development of health insurance by modifying the legislation so as to reduce the taxation pressure on the insurance payments through a higher competition at the medical service market and through promotion of voluntary health insurance.

10. Development of the medical tourism infrastructure through normalising relations (incl. the visa and transportation ones) with the outside world.

One of the success factors in the reform will be represented by its harmonious interaction with the local self-government reform, as well as with a whole set of other administrative, structural and financial reforms.

### A reform in the area of education

The major reform's objective is to create in Belarus an efficient education system to meet the professional, intellectual and creative human demands and a demand for human self-fulfilment in the contemporary society.

It should be expressed by a higher teaching and learning quality at all the levels (day-care centres, secondary school, secondary special and higher educational establishments), by integration of the Belarusian education system into the European and world educational systems (most significantly, in the area of higher learning) and by a consistent focus on the revival of the Belarusian ethnic, national and linguistic traditions in the area of education.

These objectives can be possibly achieved through addressing the following tasks:

- streamlining the education management system and reforming its funding principles;
- upgrading the teaching staff's professional level by integrating modern teaching methods, advanced training, teaching staff's retraining and regular

evaluations of personnel at all the pedagogic levels of the system;

- encouraging a higher motivation to a successful learning among the trainees;
- supporting the foundation and activities of the educational institutions of all the proprietary forms;
- de-politization and de-ideologization of the educational institutions, while preserving their secular nature;
- Belarus' comeback to the Bologna process and a recognition at the national level of the European higher education standards, academic freedoms and university autonomy and self-government; and
- extending the sphere for use of the Belarusian language within the training process at the educational establishments of all the levels and types with the goal in mind to introduce it as the main teaching and learning language.

#### Major steps to implement the reform

The said objectives and tasks are proposed to be achieved along the following directions:

- drafting and adopting the law *On Reform of the Education System in the Republic of Belarus* and altering or amending the Education Code and other legislative acts to set provisions for the reform implementation;
- drafting and adopting a State Programme in the sphere of education in the Republic of Belarus, incl. an overall stage-by-stage programme of the teaching process belarusization;
- relieving the educational establishments of a strict monitoring from the Ministry of Education and its territorial authorities;
- licensing the educational establishments as to the provision of educational services in certain areas of knowledge and evaluating them as to their educational activity's compliance with the educational laws and as to

the compliance of their education's contents and quality with the educational standards;

- promotion by the local authorities of the educational institutions' development through assignation and construction of relevant buildings/premises, selection of teaching staff and allocating appropriate subsidies;
- involvement in the Bologna process and Belarus' accession to the European higher education standards;
- ensuring the academic freedoms and university autonomy or self-government;
- fostering recognition abroad of the Belarusian higher educational establishments' diplomas granting to their graduates the right to employment in the European countries;
- evaluation of the teaching staff to reconfirm its professional level, knowledge of languages and ability to work under the new conditions;
- raising school teachers' salaries to achieve the average pay level in the country and those received by university teachers to achieve the 150% level of the average national pay;
- modifying the funding principles in the educational system by encouraging competition among the educational institutions and by granting the public the right to select an educational facility on the basis of a "pupil's portfolio" assigned to a student;
- guaranteeing a correlation between the school curriculum and the requirements related to university enrolment;
- promoting the foundation of pre-school, secondary, secondary special and higher educational establishments of the non-governmental proprietary form;
- promoting the students and teachers' exchanges with foreign educational institutions;
- promoting the scientific creativity among students and teachers, incl. at the international level;

- imposing a prohibition at schools, secondary special establishments and universities levied on the governmental ideological and political supervision in respect of the personnel and the teaching process;
- a higher extent of teaching loads at extramural form of study to meet the educational standards; and
- expanding the network of adult education facilities, such as the "third generation" universities in all the regional centres and cities with a population above 50 thousand.

### A reform in the area of the housing and utilities infrastructure

The major deficiencies of the existing system of housing and utilities infrastructure (H&UI) include a constant rise of expenditures to support the sector, rising housing and utility service (H&US) rates, financial losses or failure to generate profits by the H&UI entities, their low efficiency and resource losses, and a high degree of production asset deterioration.

The expert community suggests implementing changes along the three directions to improve the H&UI condition:

- investing in thrifty and justified resource use;
- making provisions for the H&UI entities' operation on a competitive basis; and
- introducing the account system enabling a targeted aid to the public.

The main objective behind the H&UI reforms is to reduce the prime costs of the housing and utility services provided, while maintaining their optimum quality and self-financing system functioning without financial allocations from the budget.

#### **The said objective can be achieved through addressing the following tasks:**

- creating the conditions for competition development in the H&UI domain via denationalisation of the existing municipal structures and by servicing the housing stock on a competitive basis;

- expanding the non-governmental forms of housing stock operation;
- optimisation and improvement of the H&UI management system, incl. through reorganisation of the H&UI departments with the Executive Committees of all the levels;
- delimitation of functions related to the H&UI facility maintenance between the owner and the contractor entities;
- a broad introduction into the H&UI system of energy and resource efficient technologies, incl. the housing stock's thermal insulation upgrades;
- developing the networks of electric urban public transportation vehicles;
- reducing the H&UI services' prime costs and differentiating the H&US payment system depending on the housing stock quality and location, as well as reviewing and expanding the existing system of preferences for the public;
- relieving the H&UI entities of their obligation to maintain and operate any non-core loss-generating facilities; and
- improvement of the HR training system to educate experts for employment with the H&UI entities and companies.

### **Tentative stages of reform implementation in the area of H&UI:**

The following transformations have to be performed at the first stage:

1. Putting in place the prerequisite regulatory legal conditions for privatisation and non-state-owned entities' operations as a measure to motivate competition in providing the H&US.
2. Relieving the H&UI of its non-core assets through transfer to the private sector of the burden of operating and maintaining such facilities as hotels, public baths, waste collection and disposal or undertaker services.
3. Putting in place the conditions for expanding the non-governmental forms for housing stock operation, such as condominiums, shared house ownership or other forms.

4. Delimitation of functions on the basis of contractual relations among the housing stock owners, H&UI and contractor entities for the purpose of creating a competitive environment through a sufficient and timely funding of operations pertaining to the housing stock upkeep and maintenance, as well as a concurrent reduction in operational costs of the H&UI entities themselves.
5. A transition to a competitive performance of all the contractual operations related to repairing the residential houses' structural elements or to housing stock refurbishment at first in the capital and the regional/*kray* Belarusian centres and, subsequently, in all the other urban communities.
6. Adopting a set of measures to save energy at the housing stock. Bringing all the infrastructure facilities to the proper condition, installing energy-efficient equipment, using progressive technologies and completion of water or heat source and consumer meter installation campaign. Bringing to the proper condition the heat insulation of the heat chambers and thermal distribution lines and completion of a partial abandoning of district heat supply, incl. in the rural areas.
7. Singling out the sector of rural human settlement servicing into a separate economically independent sphere with an administration and funding of its own.
8. Setting up in districts and cities of water supply and sanitation entities vested with legal personality. It would allow a more efficient upgrade of the existing water supply and sanitation system, improved management of the water supply and sanitation infrastructure and a reduction in lost water amounts.
9. Formation of a fully-fledged system for the vocational training of the H&UI personnel, while taking into account expanding and developing forms for a non-governmental housing stock organisation.

The following transformations are proposed to be performed at the second stage:

1. Managerial staff optimisation accompanied by H&UI department reorganisation/wind-up at the basic level.
2. Bringing the housing stock share serviced at a competitive level up to 80% by setting up private municipal and utility

entities.

3. Regular household waste collection and landfills to accommodate the waste should cover the urban and rural communities, but also gardeners' partnerships. Household waste collection, evacuation, storage and recycling arrangements are to be ensured at a competitive basis in all the communities by companies of all ownership forms.
4. Promoting (using investments) the construction of plants to recycle at least a half of all the household waste collected.
5. Promoting the development of urban electric public transportation with a mass-scale transition to the use of electric buses. Creating the electric transportation networks in the cities with a population over a 100 thousand.
6. Completing the thermal upgrade arrangements in respect of high-density housing stock build before 2000. It would bring a lower specific thermal energy consumption at prefabricated flat blocks by 30 to 40% and, respectively, the relevant H&US rates.