

LEGAL PERSONALITY AT LOCAL LEVEL:

LATVIA Country Case



Swedish-Ukrainian Project
"Support to Decentralization in Ukraine"



Swedish Association
of Local Authorities
and Regions



Швеція
Sverige

Following the request of the Ukrainian Specialised Parliamentary Committee on Local Self-Government, the Council of Europe is providing extended and comprehensive support on the issues concerning legal personality at local level in Ukraine. The present report was prepared in the framework of the Swedish-Ukrainian Project “Support to Decentralization in Ukraine” following the invitation of the Council of Europe. The document is based on contributions from Ms Jautrište Briede, Judge of the Supreme Court of the Republic of Latvia, AD HOC JUDGE – European Court of Human Rights. The document is structured in accordance with the questionnaire formulated by the Specialised Parliamentary Committee.

LATVIA

1	Population	1.91 millions
2	Size	62 180 km ²
3	National Day	18 November
4	Form of state government	Unitary parliamentary constitutional republic
5	Administrative-territorial system, quantity of municipalities	Latvia is divided into 42 local government units consisting of 35 municipalities and 7 state cities
6	Parliament, quantity of Members of Parliament, term	Saeima is a unicameral parliament with 100 members with 4 year terms
7	GDP (USD)	33 553 millions
8	Human Development Index	0.866

GENERAL REMARKS

The local community is a legal entity, but like any other legal entity, it operates through its bodies (organs: organ in Latvia means basic institutions or officials) and institutions.

The main body (organ) of a local community is the council (dome), which consists of members elected by the people. It has the right to express the will of the respective community directly and to decide on the most important issues. The council chairperson represents the local government in relations with the State, other local governments and court, in the name of the council issues powers of attorney.

In order to ensure the accessibility of the services provided by a local government, in municipality rural territories and towns in which the local government administrative centre is not located, the local government council may establish a rural territory or city administration.

As a body, the council has the right to establish and liquidate municipal institutions acting on behalf of the municipality. By comparison, a private company also has a decision-making body and may have branches which act on behalf of the company, but which do not have legal personality.

Laws may impose an obligation on a local government to establish an institution to perform local government functions. Insofar as it is not provided for otherwise in the Law, a public person for the purpose of effective fulfilment of its functions may establish a capital company or acquire a participation in an existent capital company provided that one of the following conditions is met:

- 1) a market failure is prevented – a situation where the market is incapable of serving the public interest in the relevant field;
- 2) activity of a capital company of a public person or a capital company controlled by public persons results in the creation of goods or services that are strategically important for the development of an administrative territory of the State or a local government or the State security;
- 3) the properties that are strategically important for the development of an administrative territory of the State or a local government or the State security are administered.

1. ***Who has legal personality (is a legal entity and hence recognised as subject of legal rights and responsibility) in your country at local level, the community (or “administrative territorial unit”) or the authority (council, executive...)?***

In Latvia only community has legal personality at local level. The authority (a council, a charman, an executive, and other municipal authorities) has no legal personality. The basic legal entity (Latvian – juridiska persona, literally translated: a legal persona) governed by public law is the State.

A person governed by public law, like a private legal person, acts with his own organs. The difference is that individuals are governed by commercial law, civil law and other rules of private law, but the state and local communities are governed by the State Administration Structure Law, the Law On Local Governments, the Law On Local Government Budgets and other laws governing the state system.

Local communities are so called derived legal entities (legal personas) governed by public law. Administrative territories and their administrative centres shall be determined by the Saeima (Parliament) in the Annex to the Law On Administrative Territories and Populated Areas (available in English: <https://likumi.lv/ta/en/en/id/315654-law-on-administrative-territories-and-populated-areas>).

The Constitutional Court of Latvia has acknowledged that the administrative-territorial units in Latvia, their status, powers and structure are determined by the central government. The obligation of the legislature as a democratically legitimised authority is taking independent decisions with regard to all important aspects of national and public life. The administrative-territorial division of the Republic of Latvia is a fundamental matter that plays an important role in the quality of governance in the Latvian State and meeting the needs of its people (see https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/07/2020-37-0106_Spriedums_EN.pdf#search=).

Local communities have their own budget, they are entitled to own property. As derived public legal entities, the local communities may establish their own institutions which do not have a status of separate legal entity. For example, they may establish municipal police, construction department, schools, social security services, but these public bodies only act on behalf of the municipality.

Unless otherwise provided by law, a public person may, in order to effectively perform its functions, establish a capital company or acquire a participation in an existing capital company if one of the conditions stipulated by law is met (Art. 88 of the State Administration Structure Law, available in English: <https://likumi.lv/ta/en/en/id/63545-state-administration-structure-law>).

2. ***In case in your country local communities or “administrative territorial units” are granted legal entity status (and hence recognised as subjects of legal rights and responsibilities), does the State possess a similar legal status?***

Yes, the Republic of Latvia is the initial legal entity (legal persona) governed by public law.

3. ***In case in your country local communities or “administrative territorial units” are granted legal entity status (and hence recognised as subjects of legal rights and responsibilities), who has the legal personality at other levels (region, sub-region, county...)?***

There is only one level of local communities in Latvia. However, there are also planning regions in Latvia. A planning region is a derived legal entity (legal persona) governed by public law. There are five planning regions in Latvia. The Cabinet shall determine the territories of the planning regions in accordance with proposals submitted by local governments.

4. ***In case intermediate-level communities (regions, sub-regions, counties...) are not granted legal entity status, which authority has such a status at these levels?***

There are no intermediate-level communities in Latvia.

5. ***Which act stipulates the legal personality/status of the State, local communities and, as the case may be, other levels of government (region, subregion, county...): the Constitution or the Law? In case it is stipulated by law, is it a general or special law? Please indicate the title of this law and provide a link to it, if available.***

Pursuant to Art. 101 of the Constitution, local governments shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia. Similarly, the same provision of the Constitution entitles every citizen of Latvia, as provided for by law, to participate in the work of local government.

The Constitutional Court has concretised the principle of self-government within the context of application of Art. 101 of the Constitution. The principle of self-government comprises the existence of local self-government and democratic legitimisation. In functional terms, a local government is a territorial self-government, i.e. it exercises its functions within a specific territory. The boundaries of administrative territories may be determined by the legislature or the Cabinet based on the mandate issued by the legislature. The Constitutional Court has concluded that the principle of self-government as such is not affected if smaller local governments are merged into a larger region. It follows that the principle of self-government does not guarantee the existence of a specific local government. (The Constitution do not prevent the legislature to implement an administrative-territorial reform in the public interests, provided that in doing so it complies with legislation, i.e. the legislature does not act arbitrarily (see para 21.1 https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/07/2020-37-0106_Spriedums_EN.pdf#search=).

The legal personality/status of the State and local communities is regulated by a general and special law.

General law: State Administration Structure Law: <https://likumi.lv/ta/en/en/id/63545-state-administration-structure-law>, which includes the definitions, relations and other essential provisions of the overall public administration architecture of the country.

Special law: On Local Governments. <https://likumi.lv/ta/en/en/id/57255-on-local-governments>.

	<p>To ensure the performance of their functions, local governments in cases prescribed by law shall issue binding regulations. Such regulations may not be contrary to the Constitution and laws.</p>
6.	<p><i>In case in your country a notion “municipality” or its analogue is stipulated in the legislation, is this notion applied to a community or a territorial unit? Or does this notion apply only/also to a local self-government authority (councils or their executive bodies)?</i></p> <p>The notion of “municipality” (local self-government – pašvaldība) is stipulated in the legislation. It is applied to a community of a specific administrative-territorial unit; all administrative-territorial units are determined by the Parliament in the Regional Development Law. It is applied also to a local self-government authority, but only in so far as it acts on behalf of the municipality.</p>
7.	<p><i>May bankruptcy proceedings be instituted against a local community or “administrative territorial unit” in your country? (yes or no)</i></p> <p>No.</p>
8.	<p><i>If you answered “yes” to question No.7, please answer the following question. Do general bankruptcy proceedings applicable to other legal entities apply to local communities or “administrative territorial units” in your country? If any special proceedings are in place, what are key criteria of bankruptcy of a local community or “administrative territorial unit” and three to four special aspects that make bankruptcy proceedings against local communities or “administrative territorial units” different from bankruptcy proceedings against other legal entities?</i></p> <p>The answer to question 7 was “no”, but it is worth mentioning that the Law “On Stabilization of Local Government Finances and the Monitoring of the Financial Activities of Local Governments” regulates the procedure by which local government financial stabilization is performed in order to ensure the fulfilment of local government autonomous functions if local governments are in extraordinary financial difficulties.</p> <p>The law is available in English: https://likumi.lv/ta/en/en/id/48456-on-the-stabilisation-of-local-government-finances-and-the-monitoring-of-the-financial-activities-of-local-governments.</p>
9.	<p><i>Do the laws of your country provide for suspension of local self-government authorities of a local community or “administrative territorial unit” (local councillors or executive bodies) from the management of affairs when the local community or “administrative territorial unit” enters into voluntary administration? (yes or no)</i></p> <p>The Law On Local Governments provides for the suspension of the local council chairperson of a local self-government, as well as the dismissal of the local council, but not for reasons related to budget deficits, as explained below.</p> <p>According Art. 93 of the Law On Local Governments if the council chairperson fails to fulfil the duties specified by law, the Minister for Environmental Protection and Regional Development may by order relieve the chairperson from performing the duties of office. The council chairperson has the right, within 30 days after publication of the order of the Minister to file a submission in court regarding revocation of the order. If they do not exert these rights, the chairperson, after expiry of the two-week term, shall be considered dismissed. If the court rejects the submission of the council chairperson, the council chairperson shall be considered dismissed from the day when the court judgment comes</p>

into effect. If the order of the Minister is revoked by a court judgment, the council chairperson shall receive the monthly salary for the time period that the chairperson was relieved from the performance of the duties of office. Art. 94 provides that the council chairperson removed from office in accordance with the procedures of Section 93 of this Law may not be re-elected as a chairperson during the current term of the council.

Art. 91-92 of the Law On Local Governments provides that the Saeima (parliament) may dismiss a council if it:

- 1) repeatedly fails to observe or violates the Constitution, laws, and Cabinet regulations, or fails to execute court judgments;
- 2) repeatedly takes decisions and performs activities on issues that are within the competence of the Saeima, the Cabinet, ministries, other State administration institutions, or the courts;
- 3) has not elected a chairperson, vice-chairperson or standing committees of the council within a two-month period after the first meeting or after the resignation of relevant officials or authorities;
- 4) is unable to take decisions because at three successive meetings more than half of the total number of councillors of the relevant council have not participated.

A council shall be dismissed by means of a law, the draft of which the Cabinet shall submit to the Saeima. A draft law regarding dismissal of a council shall be submitted by the Cabinet pursuant to its own initiative or pursuant to the proposal of the Prosecutor General.

The Saeima, in adopting a law regarding dismissal of a council, shall appoint, pursuant to the proposal of the Cabinet, a temporary administration in the relevant administrative territory and shall determine the time period within which elections for a new council shall be held. The term of office of a temporary administration and a newly elected council shall be determined by the Law On Elections of the Republic City Council and Municipality Council.

A temporary administration shall perform the functions of the council provided for in laws and shall act until the day of the first meeting of the newly elected council. For example on 13 February 2020 the Saeima adopted the Riga City Council Dismissal Law and appointed an interim administration.

10. ***If you answered “yes” to question No. 9, please elaborate what are conditions for introduction of the voluntary administration, what government authority is responsible for the voluntary administration, and what is the period of voluntary administration?***

The Law «On Local Governments» (Art. 91) provides for three cases when the Saeima (parliament) may dismiss the local government council. If the Saeima adopts a law on dismissal of the local council, it shall, upon the proposal of the Cabinet, appoint a temporary administration in the relevant administrative territory and determine the term within which new elections to the local council shall take place (Art. 92).

11. ***Do claimants, both legal entities and individuals, lodge their claims with a local community or “administrative territorial unit” in regard to any and all local issues? Do the laws of your country allow that a person may file a lawsuit directly with a local self-government authority or its official, but not with a local community?***

Claimants, both legal entities and individuals, lodge their claims with a local community. The law does not allow a person to bring an action in court directly to a local authority or its

official separate from the local community. Even if the claim states that it is brought against the official or the authority, the defendant in court is considered to be the local community as such. An employee of a particular authority may be authorized as a representative of the municipality in court.

12. ***Does your country hold officials of local self-government authorities disciplinarily or financially (civilly) liable for ineffective or unlawful decisions (where such decision results from a political position, error or incompetence, but is not a criminal offence)? If so, may damages be recovered from the property of the official at fault rather than from the property of the local community or “administrative territorial unit” (for example, joint and several liability of the local community/“administrative territorial unit” and the official or recovery from the official by recourse)?***

Losses are covered from the municipal budget. According to the Law On Local Governments (Art. 77) If a local government official has caused losses to the local government in the performance of the duties of his or her position with intent or by gross negligence, he or she has a duty to compensate such losses. The Ministry of Environmental Protection and Regional Development may also bring a claim for compensation to a court. In such case the acquired funds shall be included in the budget of the relevant local government.

In Latvia, municipal employees are not civil servants (despite the fact that it is criticized in legal doctrine), so they are subject to labour law.

The Labour Law states that if an employee does not perform work without a justifiable reason or performs it improperly, or due to other illegal or culpable action has caused losses to the employer, the employee has the obligation to compensate the losses caused to the employer. An employee shall be fully or partially released from civil liability for losses caused to an employer if the employer itself – by its orders or by failure to ensure appropriate working conditions – is also to blame for the losses. The extent of civil liability of the employee shall be determined depending on the circumstances of the case, especially taking into account the extent to which the balance of the fault has been that of the employee or of the employer.

The Labour Law stipulates that an employee may be dismissed if the employee lacks adequate occupational competence for performance of the contracted work.

13. ***What legal status do the local self-government authorities have if the local community or “administrative territorial unit” is a legal entity and hence recognised as subject of legal rights and responsibility? How is the scope of the legal personality of local self-government authorities defined in this case?***

The local self-government authorities act on behalf of the municipality. Their legal status is set out in regulations approved by the municipality. The council appoints to office and remove from office the heads of authorities and other officials in cases provided for by law and local government regulations. Generally, this regulation gives the authority and its leader a relatively large amount of competence and discretion. The local self-government authorities are financed and their material and technical supply is provided from the municipal budget. Their property is the property of the municipality, which is in the possession of the authority.

14. ***Who can act on behalf of a local community or “administrative territorial unit” directly in court? On what grounds? Do the laws of your country allow that a local community***

or “administrative territorial unit” is represented in external relations (in court, for example) by the State or a government authority?

Decisions of local governments shall comply with the Constitution, the Law On Local Governments and other laws, as well as with Cabinet regulations. Art. 49 of the Law On Local Governments provides that the operation of an unlawful binding regulation or other regulatory enactment or specific paragraphs of such issued by a council (except individual decisions – administrative acts) may be suspended by a substantiated order of the Minister for Environmental Protection and Regional Development. The order shall indicate the paragraphs of the specific binding regulations or other regulatory enactment that are to be revoked as unlawful or shall indicate that the binding regulations or other regulatory enactment are to be revoked in their entirety. The council chairperson shall convene, within two weeks after receipt of an order from the Minister, an extraordinary council meeting for the examination of the issue regarding revocation of the relevant binding regulations or other regulatory enactment or specific paragraphs of such.

If the council fails to take a decision to revoke the relevant binding regulations or other regulatory enactment or specific paragraphs thereof, it shall submit an application to the Constitutional Court regarding the revocation of the order of the Minister within three months. In such case the order of the Minister regarding the suspension of the operation of the council binding regulations or other regulatory enactment or specific paragraphs thereof shall remain in force until the proclamation of the judgment of the Constitutional Court.

If the council or its chairperson fails to implement the provisions mentioned, the unlawful binding regulations or another regulatory enactment or specific paragraph thereof shall be considered to be repealed. The Minister shall issue a notice regarding such in the official gazette.

15. ***If in your country the State or a local community/“administrative territorial unit” has changed their legal personality over the past thirty years, please indicate how long did the transformation take and what were the milestones of the transformation?***

Yes. The understanding of the status of the state and local government changed after the restoration of Latvia’s independence in the 1990s. Initially, the Soviet approach was that each institution had legal personality.

In 1994, the Law On Local Governments was adopted, Art. 4 of which provided: In implementing local administration, local municipalities, within the scope specified in the Law, are bodies governed by public law but in the field of private law the local governments have the rights of a legal person.

The understanding that institutions are not legal persons but act only on behalf of the state and local municipality was strengthened also in the Administrative Procedure Law (2001) and the Public Administration Structure Law (2002).

16. ***If in your country the State or a local community/“administrative territorial unit” changed their legal personality amid external or internal armed conflicts, were any risks identified for the territorial integrity or national security as a result of this change? If so, what preventative actions were taken to avoid these risks?***

—

FOR NOTES

A series of horizontal dotted lines for writing notes.

The present layout of the report was produced in the framework of the Council of Europe Programme
“Enhancing decentralisation and public administration reform in Ukraine”