



ASSOCIATION
FOR COMMUNITY
SELF-ORGANIZATION
ASSISTANCE

ANALYTICAL DIGEST

**FIRST YEAR OF VOLUNTARY UNIFICATION OF
TERRITORIAL COMMUNITIES: PRECEDENTS**

**COOPERATION OF TERRITORIAL COMMUNITIES:
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IN THE UKRAINIAN VILLAGE**

All-Ukrainian NGO "Association for Community Self-organization Assistance" starts the production of analytical digests containing summaries of analytical notes and Articles produced by Association's experts on the urgent problems of reform of local government, development of self-organization and forms of participatory democracy at the local level in Ukraine.

Analytical surveys consist of analysis of problems arising during the implementation of reforms and recommendations to local, regional and central government.

FIRST YEAR OF VOLUNTARY UNIFICATION OF TERRITORIAL COMMUNITIES: PRECEDENTS

A year passed since entry into force of the Law “On Voluntary Unifications of Territorial Communities” which gave an official start to increasing the number of communities in Ukraine. Pursuant to this Law, territorial communities of villages, settlements and towns are to be united on a voluntary basis, and a Prospect Plan is to be approved for the formation of capable citizens to become a guide for communities in the process of association.

The process of association of communities which is new for the country affects the interests of many parties – representatives of the executive authority, local self-governing authorities and residents. Therefore, it does not occur easily. And it is natural that precedents for the resolution of disputes and disagreements in the positions of subjects engaged in the process of association have formed.

Analysis of court judgments in this field allows deeper determination of problems, their reasons and resolution.

Study of precedents has been carried out on the basis of data from the Unified State Register of Court Judgments. Over 30 court judgments for the period from March 5, 2015 till March 16, 2016 have been analyzed.

Analysis of reasons for going to courts allows determination of two main causes:

1. Violations during public discussions in the process of voluntary association of territorial communities.
2. Violations during development and approval of a Prospect Plan for the formation of territories of communities in regions.

1. Violations during public discussions in the process of voluntary association of territorial communities



The largest number of suits was on this matter. They were filed by members of territorial communities and deputies of local councils. In most cases, courts dismissed them as local councils submitted copies of minutes of held public discussions, which was the main evidence. However, as of March 2016 there are also satisfied suits, and criminal proceedings were initiated on counterfeiting minutes of general meetings by a village head.

Suits satisfied by courts include:

- ⊕ Actions of the local council related to improper consideration of the village head's offer on the association of territorial communities were recognized illegal.
- ⊕ Decision of the village head “On the Consent to Voluntary Association of Territorial Communities” was annulled.
- ⊕ Decision of the village head “On the Approval of Draft Decision of the Village Council “On Voluntary Unification of Territorial Communities” was annulled.

2. Development and approval of a Prospect Plan for the formation of territories of communities in regions

Village heads, deputies of local councils and members of territorial communities went to court on this matter. In their suits, plaintiffs asked mainly to annul the decision of the regional council “On the Approval of the Prospect Plan for the Formation of Territories of Communities in Regions” in part relating to their settlement.

But none of the suits was satisfied in the analyzed court judgments since, according to the court's conclusions, association of territorial communities is voluntary and it does not have to follow the Prospect Plan which is recommended and optional in nature.

Analysis of court judgments can distinguish the following main problems with which plaintiffs went to courts:

- ⊕ No public discussions of improper conduct of public discussions in the process of voluntary association of territorial communities;

- ✦ No proper legal support of the conduct of public discussions on the matters of voluntary association of territorial communities;
- ✦ Formation of Prospect Plans in violation of the legislation;
- ✦ Insufficient level of communications and improper engagement by regional state administrations of members of territorial communities, deputies of local councils, village and settlement heads in the process of development of Prospect Plans.

These problems can and should be prevented in future. The following is offered for this purpose:

First. The Verkhovna Rada of Ukraine should record legal regulation of the procedure of holding general meetings and conferences of members of territorial communities according to the place of residence, taking into account registration of the corresponding draft law in the Secretariat of the Verkhovna Rada of Ukraine under No. 2467 which is to be considered in the first reading in the near future because it is not possible to guarantee high-quality accounting of residents' opinion during public discussions regarding voluntary association of communities in the absence of regulated procedures for such discussions

Second. Local councils intending to perform association can approve Regulations on public discussions taking into account requirements stipulated by the Law “On Voluntary Association of Territorial Communities” and duly inform all those interested about holding public discussions during the procedure of voluntary association of territorial communities.

Third. As of March 2016, there is still a need for amending Prospect Plans. Therefore, regional state administrations together with offices of reforms and non-governmental organizations should activate this process and take into account the opinion of members of territorial communities to the maximum extent.

Fourth. Analyzed court judgments suggest frequent absence of a tradition of local councils and state administrations to discuss important matters related to the activity of communities with residents. Therefore, when they have to hold



such discussions, it is done with low quality and efficiency. And residents themselves are not always willing to participate in such discussions as they doubt their real possibility to affect decisions. That is why local public authorities, local self-governing authorities, offices of reforms and non-governmental organizations should perform informational and explanatory work.

Fifth. In case of violations of the legislation in the field of voluntary association of territorial communities, village, settlement and town heads, specialized non-governmental organizations and members of communities should turn to regional state administration.

If it does not respond in a proper way, they should file a complaint to the specialized ministry – Ministry of Regions, or appeal against such activities in court. In the latter case, one should gather evidence base and form claims with clear explanations of the problem.

Analysis of court judgments in the field of voluntary association of communities has also showed that in some cases, judges' conclusions are based on controversial and disputed arguments that can be attributed to somewhat imperfect legislation and absence of proper precedents in the consideration of cases of such category.



COOPERATION OF TERRITORIAL COMMUNITIES: UNUSED RESERVES

Development of cooperation of territorial communities had to become one of the first steps to reforming local self-government and association of territorial communities.

A year passed since the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On the Cooperation of Territorial Communities” but the practice of using it is very small though the Government took measures on its implementation and provided organizational and financial assistance to pilot settlements during this time. According to the Register of agreements on the cooperation of territorial communities published on the web-site of the Ministry of Regions, currently Ukraine has 17 such registered agreements valid in 5 regions: Ivano-Frankivsk (7 agreements,) Poltava (5), Khmelnytskyi (2), Chernigiv (2) and Vinnytsia (1).

Cooperation enables citizens to solve important matters of local importance and influence the development of territories in a mutually beneficial way without association of citizens. Offers of cooperation can be given by village, settlement and town heads and deputies of local councils, as well as members of a territorial community in the order of local initiative.

The purpose of such cooperation should be better quality of services provided to population, development of territories and well-being of citizens on the basis of common interests and goals. The above Law provides for public stimulation of cooperation through subventions, transfer of public property into communal property, methodological, organizational and other types of support of the activity of cooperation subjects.

WHY DO NOT CITIZENS WANT TO COOPERATE?

It is probably too early to analyze the efficiency of the Law “On the Cooperation of Territorial Communities” and the agreements themselves. However, it should be noted that in our opinion, possibilities of cooperation brought by this Law for the



development of territorial communities, especially during the period of power decentralization and association of communities are used very insufficiently because only 5 out of 24 regions of Ukraine practice entering into cooperation agreements. Cities are not in a hurry to cooperate with small territorial communities at all.

Non-readiness of local councils to share their own powers and resources is confirmed by the fact that two forms of cooperation providing for such an opportunity have not been used yet. Possible reasons of such situation include:

- ⊕ Insufficient awareness of village, settlement and town heads and deputies of local councils of the possibility to enter into cooperation agreements with other communities (it concerns primarily communities remote from district and regional centers);
- ⊕ No legal regulation of the mechanism of local initiative of members of a territorial community at the local level because of the absence or imperfectness of Charters of territorial communities;
- ⊕ Poor understanding of the procedure of entering into agreements on the cooperation of territorial communities because of small practice of their signing;
- ⊕ Concerns of local authorities to loss influence on certain municipal objects which are also often used as sources of unaccounted income;
- ⊕ Inability to take into account interests of the other party when determining terms and conditions of the agreement, inability to hold negotiations and reach a consensus.

WHAT ARE POSSIBLE STEPS TO IMPROVE THE SITUATION?

The process of cooperation of communities may engage various subjects that will be able to positively affect the development of this area.

First. We recommend the Ministry of Regions to publish texts of signed agreements on the cooperation of territorial communities on its web-site for review. The Ministry should also publish reports on the results of the execution of agreements on the cooperation of communities to be prepared by corresponding local councils. Now, at



the initial stage of the implementation of cooperation mechanisms, it is especially important to publish both positive and negative sides; all of it is practice for wide public to review.

Second. Deputies of local councils and village, settlement and town heads should include matters of possible cooperation with other territorial communities into their “agenda”. It can be any other community, even an unrelated one, since the Law does not contain requirements as of their relation. For example, a cooperation agreement can be entered into by territorial communities from Lviv and Ternopil regions.

Establishment of a working group on the matters of cooperation (as, for example, in Odessa) can be a possible option. Local councils should also bring in line local regulatory and legal acts which can be used in the process of entering into cooperation agreements, primarily, the Charter of a territorial community that should properly regulate the matter of local initiative and holding public discussions.

Third. Members of territorial communities should not be passive, either. The process of power decentralization has been started for the very reason to transfer powers and resources to places. And it concerns not only local authorities, but people themselves, local associations and territorial communities, which are the primary source of power pursuant to Article 5 of the Constitution of Ukraine.

In case of transfer of powers and funds, responsibility is transferred, too. Implementation of the Law “On the Cooperation of Territorial Communities” allows not only combination of the possibilities of communities, but also distribution of a part of responsibility for the implementation of certain powers of local self-government among them. Therefore, active public should keep abreast of local life and turn to a local council in case of offers of cooperation with other community in the order of local initiative. An initiative group can consult, for example, a public organization specializing in this area beforehand.

Fourth. Institutes of civil society are playing an increasing role in the life of territorial communities. It especially concerns local public organizations and bodies of self-organization of population (that are currently more developed in cities). They should mobilize, consolidate their effort and perform consulting and explanatory work among population and local self-governing authorities on the matters of cooperation of territorial communities, too, thus making their own contribution to the process of decentralization and reformation.

Under these conditions, cooperation of territorial communities will start working as a powerful tool of reformation of local self-government and strengthening a real capacity of territorial communities.



PLACE OF SELF-ORGANIZATION BODIES IN THE SYSTEM OF MANAGING A UNITED COMMUNITY

The structure of management of a united community offered by the Ministry of Regions is built quite efficiently:

1. Decision-making centers – local head, council and executive committee – are located in a community around which the association took place.
2. Communities where local self-governing authorities are liquidated elect a monitor – representative of their interests. Centers of administrative services are established everywhere to improve quality and availability of the provision of administrative services to citizens. Own district inspector ensures protection of public order in each village and settlement.

But are these institutions sufficient for high-quality and adequate representation of interests of small communities joining a large center? In our opinion, this structure needs an addition.

Self-organization bodies (SOB) should be established in communities where a local council is liquidated in order to help monitors of these communities to represent interests of their residents.

SOB can and must become an important element of the system of managing a united territorial community and complement the system of representation of interests of small communities.

Since this system of representation in the reformed community is not complete, it is urgent to establish efficient cooperation of all public subjects representing interests of small communities – monitors, SOB and local deputies elected from these communities.



Practice the provision of SOB established within the territory of a village or settlement where a council was liquidated with additional delegated powers and, correspondingly, additional resources to exercise these powers and solve problems of its community. Such right of a local council is recorded in Art. 15 of the Law of Ukraine “On Public Self-Organization Bodies”.

Establish efficient cooperation of monitors and SOB as components of the system of representation of interests of communities in the system of local self-government. This model of interaction can be recorded in the Charter of a territorial community, Regulations on the monitor (to be approved by a local council) and Regulations on the body of self-organization of population (by SOB itself, upon recommendation of a local council or its executive committee as an option).

At the level of public authorities it is reasonable: For the Verkhovna Rada of Ukraine – to approve draft law “On Public Self-Organization Bodies” (No. 2466) as amended and “On General Meetings (Conferences) of Members of a Territorial Community According to the Place of Residence” (No. 2467).

For the Ministry of Regions of Ukraine – to include SOB into the structure of managing a united territorial community and spread information on the advantages of such model; to recommend local self-governing authorities to establish BSOP in communities where there is no local council.

At the level of local councils of united territorial communities: Establishment of SOB shall be promoted in small communities joined to the “center” to create necessary conditions for representation and protection of interests. Regulations on the monitor should include detailed information on the mechanisms of interaction of monitors and SOB. Such mechanisms should be based on the principles of mutual assistance in common activity aimed at better life of the community.

Regulations of the executive committee of councils should include standard on the compulsory approval by the monitor of draft decisions on the matters important for the community. SOB established within communities without a council should include detailed information on the mechanisms of interaction with the monitors of these groups into their own Regulations. SOB with the status of a legal entity should enter into interaction and cooperation agreements with monitors and deputies elected from the community.



STAROSTA (VILLAGE MAYOR) – A NEW PERSON IN THE UKRAINIAN VILLAGE

Position of a starosta in the legislative field in independent Ukraine is new being introduced in 2015 together with the adoption of the Law “On Voluntary Association of Territorial Communities”. Therefore, Association for community Self-Organization assistance has analyzed regulatory and legal acts regulating the matter of election, powers (rights and obligations) and responsibility of the starosta as an official of local self-government.

Based on the conducted analysis, in order to ensure proper activity of starosta and development of rural territories, we recommend to:

1. Regulate the legal status, procedure for election and dismissal of starosta at the legislative level. For the Ministry of Regions of Ukraine together with representatives of local self-governing authorities of united territorial communities, institutes of civil society – develop the draft law “On Starostas” or prepare necessary amendments to the Law “On Local Self-Government in Ukraine”, where to:

- Determine clear criteria according to which a local council of a united territorial community should provide by its decision for villages (settlements) where a starosta should be elected and conditions under which he/she can be elected from two or more settlements;
- Determine the term during which a local council of a united territorial community should appoint first elections of starosta in villages and settlements (which are not an administrative center) included into a united territorial community;
- Secure the starosta's right to be elected head of a body of self-organization of population (village or settlement committee);
- Determine grounds and procedure for early termination of starosta's powers.



2. For the Verkhovna Rada of Ukraine – adopt amended Law of Ukraine “On Bodies of Self-Organization of Population” (No. 2466) clarifying the status of bodies of self-organization of population, improving and facilitating the procedure for their establishment and expanding possibilities of their current activity in the resolution of matters of local importance.

3. For the Verkhovna Rada of Ukraine – adopt Law of Ukraine “On General Meetings (Conferences) of Members of Territorial Communities According to the Place of Residence” (No. 2467) clearly determining and expanding powers of general meetings, determining principles and procedures for their holding and regulating the procedure for holding conferences. General meeting of the residents of a village or settlement of a united territorial community is the supreme collegial body of their community and form of their direct participation in the resolution of matters of local importance.

4. For united territorial communities – introduce practice of common functioning of the starosta, body of self-organization of population (village or settlement committee) and general meeting in a village or settlement following the example of Poland. These institutions should complement each other and aim resolution of matters and problems of rural area and, accordingly, its social, economic and cultural development.

5. For councils of united territorial communities:

- Allocate a municipal room where the starosta together with the body of self-organization of population (village or settlement committee) will be able to receive residents, issue certificates, keep documentation and carry out other activity aimed at the exercise of their powers;
- Allocate funds from the local budget, carry out logistical support of the starosta's activity together with the body of self-organization of population;
- Approve Charter of a united territorial community providing for detailed regulation of all matters related to the establishment and activity of the institute of starostas and bodies of self-organization of population;



- Provide for a list of matters to be considered at a general meeting and approved by the body of self-organization of population (village or settlement committee), for example, on the disposal of land plots, municipal property, etc. in the Charter of a united territorial community or Regulations on the general meeting of citizens.
6. For the executive committee – provide for the procedure for starosta's participation in its work and mechanisms of exercising their rights and obligations in the Regulation.
 7. For starostas together with bodies of self-organization of population – search for resources (budget, grant, investment) for the needs of the village (settlement), namely, for the construction of a playground, development of an official web-site of the village (settlement), connection to the Internet, transport connection, holding social and cultural events, provision of libraries, etc.
 8. For the residents of villages and settlements – initiate establishment of village and settlement committees to the council of a united territorial community. Pursuant to the Law “On Bodies of Self-Organization of Population”, only residents are entitled to establish an initiative group on the formation of a body of self-organization of population.
 9. Specialized central and local public authorities, regional and district councils, public organizations and analytical centers should organize education and explanatory work in united territorial communities and provide analytical and methodological materials and guides, where possible:
 - For starostas – on the matters of management, development of the village (settlement), communication and interaction of starostas with local councils of united territorial communities, bodies of self-organization of population, public organizations, residents, etc.;
 - For heads and deputies of united territorial communities – on the matters of management, development, attraction of investments into the united territorial community, cooperation of territorial communities, communication and interaction with starostas, bodies of self-organization of population, public organizations, analytical centers, residents, etc.;



- For institutes of civil society, residents of united territorial communities – on the matters of establishment and activity of bodies of self-organization of population (village or settlement committees), holding general meetings (conferences), local initiatives, public hearings, public control, establishment and activity of cooperatives, etc.

10. For international and public funds, public organizations, media – organize and conduct competitions to determine the best practices of activity of starostas together with bodies of self-organization of population (village or settlement committees).

11. Throughout the year of 2016, starosta (by specialized public authorities, regional and district councils, analytical centers, public organizations) positive and negative practices in the following areas:

- Allocation of funds and resources for organizational support of the activity of starostas, bodies of self-organization of population (village or settlement committees);
- Adoption by councils of united territorial communities of Charters of territorial communities, Regulations on starostas, Regulations of local councils and their executive committees, other local acts concerning starostas, bodies of self-organization of population, public organizations, mechanisms of local democracy, etc.

Such monitoring will enable determination of positive and negative sides of these matters and preparation of recommendations for other territorial communities as the association of territorial communities in Ukraine has just started.

In conclusion, it is worth mentioning the provisions of the European Charter of local self-government on the essence of local self-government: “Local self-government means the right and capability of territorial collectives to carry out regulation and management of the essential part of public affairs under their own responsibility and in the interests of local population within the law”.



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