



Strasbourg, 24 October 2017
CELGR/LEX(2017)2

**ASSESSMENT OF THE LAW OF UKRAINE
ON «THE STATUS OF LOCAL COUNCILORS»**

Introduction

The Head of the Committee on State Building, Regional Policy and Local Self-Government of the Verkhovna Rada of Ukraine has requested¹ the Council of Europe's legal opinion on the law of Ukraine on « the Status of Local Councillors» (Official bulletin of the Verkhovna Rada of Ukraine, 2002, N°.40, p.290).

The present opinion was prepared on the basis of the contribution of Council of Europe experts, in the framework of the implementation of the Council of Europe Programme "Decentralization and territorial consolidation in Ukraine".

European standards and good practice

The main European standards (and international obligations) relevant to this law are set in Articles 3, 6 and 7 of the European Charter on Local Self – Government.

The preamble of the Charter states that "...this entails the existence of local authorities endowed with democratically constituted decision making bodies and possessing a wide degree of autonomy with regard to their responsibility".

Article 3 paragraph 2 reads "This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them."

Article 6 reads that "...local authorities shall be able to determine their own internal administrative structures."

Article 7 concerns the conditions under which responsibilities at local level are exercised. It reads as follows:

- The conditions of office of local elected representatives shall provide for free exercise of their functions.
- They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
- Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

The formulation "local elected representatives" remains unclear on whether it does include elected representatives with executive functions and especially full-time ones. However the explanatory notes under Article 7 resolve this ambiguity by affirming that "The material considerations include appropriate financial compensation ... particularly in the case of councillors elected to full-time executive responsibilities...".

The report on the "Status and working conditions of local and regional elected representatives – basic principles" (n° 46) of the Council of Europe Steering Committee on Local and Regional Authorities (CDLR) provides useful information and good practice. The CDDG report on "Liability of local elected representatives for acts or omissions in the course of their duties (n° 67) is also of particular help.

¹ By letter No. 04-14/13-2648 dated 14 August 2017.

In 2004, a high (ministerial)-level conference organised in Noordwikerhout (Netherlands) adopted a very ambitious Model Initiative Package including a Handbook on Public Ethics at Local Level, the first part of which deals with the status of local elected representatives and contains very precise guidelines for all stakeholders involved (central government, local authorities and elected representatives themselves).

The Council of Europe Congress of Local and Regional Authorities prepared a Code of conduct for the political integrity of local and regional elected representatives.

Analysis

As described in the preface, this Law provides for the legal status of a councillor of a village, settlement, city rayon, rayon, or oblast council (the 'local council'), and for the guarantees of a councillor's activity, as well as for the procedure to recall a local councillor.

The analysis of this law identifies several issues for consideration concerning:

- The duties of local councillors;
- The rights of local councillors;
- The interaction between local councillors and voters;
- The councillors groups.

In addition, the relationship between local elected and professional officials needs to be further clarified.

The rights of local councillors

Art 11 (paragraph 1, 2) and art 29 both set forth the right of local councillors to participate, with deliberative vote, in the operation of other local councils and their bodies.

This setting up does not comply with the principles of democratic representation according to which elected representatives (i.e. local councillors) shall exercise their duties in their constituency and for the population who elects them. However, local councillors shall be given the possibility to participate in meetings of other local councils *without deliberative vote* when issues of joint interest for both local authorities are discussed.

Similar attention should be given to Article 19 paragraph 1 which sets forth "*A local councillor who is not a member of a council's respective body may participate in its work with deliberative vote*". The participation of a councillor with deliberative vote in a Committee to which (s)he does not belong would unbalance the composition of the Committee and is therefore not recommended.

In addition, the law does not clearly distinguish between the territory of a local self-government and an electoral constituency; this distinction would deserve to be clarified.

Councillors' groups and councillors' factions

Article 25, paragraph 2, which states that "*Local Councillors shall unite in councillors' groups on the basis of common territory between constituencies*" is not clear on the type of constituency organization and encourages confusion. Provided that physical

persons have the right to freedom of association, it is suggested to delete this paragraph in order to avoid confusion and misunderstanding.

Moreover, at least in the English translation, there seems to be some overlapping, leading to misunderstandings, between councillors' groups and councillors' factions. Art 27, paragraph 1, sets forth "*Councillors' factions in local councils shall be established, on a party basis, by local councillors*". One may explore the basis on which councillors' groups shall be established. Similar, it might be appropriate to consider the basis on which the Councillors' factions shall be established, i.e. on a more general assumption such as the common understanding of local needs.

Similarly, Article 16, paragraph 15 which states that "*...a local councillor shall be entitled to...unite with other local councillors in the councillors' groups or factions that act in accordance with the council's regulations*" deserves reviewing.

The interaction between local councillors and voters

According to article 10, paragraph 2, "*a local councillor who has betrayed the voters' trust may be recalled at any time according to the procedure set forth herein*"; article 38 also sets that a local councillor may be recalled by voters.

An elected representative should act for the interests of the community s(h)e governs upon and not exclusively in the interests of those who voted for her/him and should not be bound by any imperative mandate.

In addition, article 37, paragraph 3, evokes the "*discrepancy between a local councillor's practical activities and the key principles and provisions of his election programme...*" as grounds for recalling local councillor on popular initiative. One may doubt that such a procedure does not comply with a basic pillar of democracy. Moreover, if the electoral procedure takes place by secret ballot, it is impossible to know who voted for the councillor to be recalled and therefore who would have the right to recall the councillor.

The relationships between local councillors and voters

Article 16 provides for "*Reporting before and meeting with voters by a local councillor*"; article 17 sets the "*voters' demands*".

The relationships between voters and elected should not be regulated according to fixed standards. The practice of democracy requires initiatives on the side of citizens in their capacity as voters and on the side of citizens in their capacity as elected representatives. Such initiatives should be encouraged but not imposed by law. It is therefore suggested to delete both articles 16 and 17.

The rights of local councillors in a constituency

Article 14 on the "*The right of local councillors to be received without delay and to be provided with necessary information*" states that (paragraph 1) "*...a local councillor shall be entitled to be received...*". Such an authority/power should be applied only to administrative structures in charge of implementing local governments' acts and not to private enterprises or any other legal person in charge of implementing local government's acts, be it of public or private law.

Similar considerations could be made on article 14, paragraph 2 which sets forth *“officers of local executive authorities, local self – government authorities head of enterprises...in response to a local councillor’s appeal shall provide him with reference materials or other information required for the exercise of councillor’s powers”*.

As a matter of principle, most local councillors do not hold personal, but only collegial authority. Moreover, local staff should be protected against abuse and undue pressure from individual councillors. In several countries which did not make a distinction between the authority of the Council as collegiate body and the individual authority of councillors as representatives instances of abuse of authority by councillors have been signalled. Councils can convene appointed officials and ask questions and the administration should be obliged to provide such information. Individual councillors should be entitled to be provided with the information needed in order to accomplish their deliberative tasks but they should in no way be or be seen as hierarchical superior to local staff (except, of course, for councillors with executive functions and in the limits of their mandates).

Local elected and professional officials

According to article 6, paragraph 2, *“A local councillor elected to the position of a secretary of a village, settlement, city council, a mayor or a deputy mayor of a rayon, oblast, city rayon council shall work at the respective council on a permanent basis and may not combine his official functions with any other work, including on a pro bono basis (save for out-of-hours teaching, scientific or creative activities), perform entrepreneurial activities or obtain profit from it, unless otherwise provided by law”*. Paragraph 3 states, *“Under a resolution of an oblast, Kyiv or Sevastopol city councils, a councillor elected to the position of a chairperson of a budget standing committee may work at such council on a permanent basis”*, article 32 paragraph 2 *“...in the event of exercise of councillor’s powers during working hours, a local councillor shall be reimbursedthe average salary and other expenses...”* and in particular article 33 paragraph 1 *“...in the event of a local councillor’s election to an elected position in a council, in which he works on a permanent basis, an employment contract ...”* local councillors may hold a full time responsibilities or special functions.

While in many countries full time engagement is often implied for Members of Parliaments, engagements are usually not so demanding for local Councillors. While a Mayor (and in some cases one or several Deputy Mayors) can possibly be considered as a full-time responsibility, a substantial proportion of the local elected councillors hold part-time responsibilities or their political duties constitute an ancillary activity.

Here it is suggested to consider and clarify the issue of the relations between a local councillor who holds his legitimacy from a democratic election and an officer granted with professional legitimacy (e.g. following a competitive selection based on technical examinations or an ad hoc school /university degree ensuring relevant know how and skills).

Some conclusions and recommendations

It is generally agreed that the current law should be reviewed in the light of recent developments and changes in local government legislation, in support of the territorial reform, the local civil service and other relevant reforms.

This brief analysis focused only on the issues raised by the current law, but not on the issues which are missing from it. In the light of the CoE standards and guidelines mentioned above, it seems that several elements are missing. As examples, the question of accountability is not sufficiently well resolved, the various types of liability and the conditions which are needed for it to be activated (serious negligence or deliberate tortious intent as the Council of Europe puts it) and the law only provides for the very cumbersome procedure of recall. The issues of declaration and conflict of interests or of interdiction to have employment contract with some types of companies after the expiration of the elective mandate are also not dealt with.

It is suggested to establish a road map with well-defined issues for consideration, steps and deadlines, starting with the issues identified by the analysis of this statute law. In particular,

1. Reviewing and possibly removing the possibility for councillors elected in one specific council to take part with deliberative vote in the proceedings of another council;
2. Clarifying the overlapping functions of groups, factions, bodies (standing committees) of local councillors;
3. Reviewing and possibly removing the provisions attempting to regulate the relationship between voters and councillors;
4. Assessing and clarifying the authority / power of local councillors over the local administration called upon to implement political decisions;
5. Defining the rights and acts to be issued by local elected councils as well as their position in the hierarchy;
6. Solve the questions of liability, conflicts of interests and sanctions.
7. Raising awareness and defining the relationship between democratically elected local representatives and professional officers recruited according to school / university degrees and ad hoc competitive selection procedures.

A collection of standard provisions and good practice examples relevant to the status of local councillors is provided in appendix to this document.

The Council of Europe and its experts will remain available to continue the discussion with the Ukrainian authorities and advise on steps forward, in the light of the CoE standards and good practice, as well as taking into account other relevant legislation of Ukraine.

Appendix

Some basic principles and suggestions regarding the status of local government officials

This Appendix includes three sections:

- **Section 1** draws on the report of the Steering Committee on Local and Regional Democracy (CDLR) on the Status and working conditions of local and regional elected representatives – Basic principles. It comments on the differences according to the level of the authority, on the category of elected representatives with special responsibilities, on the nature of the work load and concerning equality between the sexes. It also provides examples, opinion and recommendations by the Committee on the conditions of office, occupational status of elected representatives and fair representation of both sexes.
- **Section 2** provides an extract of the Model initiatives package on public ethics at local level of the Steering Committee on Local and Regional Democracy (CDLR)¹ which includes precise guidelines on the status of local elected representatives for all stakeholders involved (central government, local authorities and elected representatives themselves). It provides a collection of good practices. Central and local authorities could select the practices that are relevant to their specific situation.
- **Section 3** recalls the provisions of the European code of conduct for the political integrity of Local and Regional elected representatives², adopted by the Congress of Local and Regional Authorities of the Council of Europe. The purpose of this code is to consolidate the relationship between citizens and local and regional policy-makers by setting out, at European level, ethical principles approved by the delegates of Europe's local and regional elected representatives. The Congress invited national governments and national associations of local and regional authorities of member states to detail the standards and principles established by the code in their national legislation and in ethical codes.

Further details and specific information on these documents will be provided during next discussions with the Ukrainian authorities.

¹ The whole document can be found at <https://rm.coe.int/1680746e39>

² The Congress is currently up-dating the European code of conduct for the political integrity of Local and Regional elected representatives

Section 1 – The Status and working conditions of local and regional elected representatives – Basic principles³

General comments

Distinction according to the level of the authority

The expression "local elected representatives" covers different situations in different countries: such representatives may hold office at local (municipal), provincial (department, county) or regional level. There are no common European standards for these three tiers in terms of either size of authority or areas of responsibility.

For these reasons, it is not possible either to consider local elected representatives as a single category or to divide them into three clearly separate categories. This document therefore sets out basic problems, common to all levels. Where substantial differences do exist, however, a special mention of this is made in the text.

Category of elected representatives with special functions or responsibilities

Whatever the terms used, there is nevertheless a relatively standard distinction in most countries at each tier of local government. It makes it possible to differentiate the conditions of office of those elected local authority members who have special functions or responsibilities (usually the members of the executive, but sometimes, depending on the country, committee chairmen or leaders of a political faction) and the conditions of office of those who have no such responsibilities and are merely members of the assembly and of committees.

This distinction is clear mainly where working conditions and pay are concerned and will, as far as possible, be mentioned in the paragraphs in which it is relevant.

Nature of the work load

A distinction is drawn in this document between three degrees of commitment, in terms of time, required of those holding political office. They are defined here, since approaches vary from country to country:

- Elective duties considered as a full-time responsibility: i.e. an elected representative with such responsibilities cannot, as a rule, engage in another occupational activity at the same time.
- Duties considered as a part-time responsibility: i.e. they take up a substantial proportion of the elected representative's working time which can generally be expressed in terms of a percentage of full-time work (40%, half-time, etc.).
- Political duties which constitute an ancillary activity: i.e., they do not generally affect the main occupational activity of the elected representative (who may therefore keep a full-time job).

The distinction between these three categories does not reflect the practice in all countries. In particular, some consider that any elective office, even if it involves only a few hours' work a month, is a part-time job. The distinction nevertheless seems useful for the purposes of a detailed analysis of the situation.

³ Report of the Steering Committee on Local and Regional Authorities which can be found here

Equality between the sexes

All the opinions expressed apply to female as well as to male local elected representatives, without distinction of sex.

Conditions of office*Multiple office holding*

Generally speaking, it is possible to hold more than one elective office simultaneously. Most states have no specific legislation on the subject.

In practice, it is virtually impossible to hold more than one office at the same level, since the conditions for standing in elections can hardly be met in two local authority areas at the same time.

As for the holding of more than one office simultaneously at different levels, only one country stipulates that there is general incompatibility between local office and membership of the national government. On the other hand, five countries set limits on multiple office holding by members of the local or regional executive.

There is currently a noticeable trend towards restrictions on multiple office holding. In one country, for instance, political parties no longer place candidates who already hold elective office on their lists. In other countries draft legislation designed to limit the possibilities of multiple office holding is under discussion.

Opinion of the CDLR

Simultaneous holding of more than two direct elective offices at different levels is not desirable, as it generally causes practical and technical problems and should not, in principle, be practised.

Obligation on elected representatives to declare their interests

In some countries local or regional elected representatives are obliged, before they take office, to provide information about their financial and personal interests (land ownership, commercial activities). They must subsequently provide information about any changes in these interests during their term of office. In other countries this obligation applies only to local or regional elected representatives who are members of the executive. In yet other countries, these provisions apply only where elected representatives have a direct or indirect financial interest in a matter being discussed by the local council, or when that interest could affect the performance of their duties.

There are also countries in which elected representatives are not required to reveal their sources of income or to declare their financial or personal interests, even if these are connected with matters being discussed by the local council.

Many states prohibit elected representatives from being present or taking part in a vote during local council proceedings concerning subjects in which they have a direct interest in either a personal capacity or as agents, or in which blood relatives or relations by marriage up to the third degree have a direct personal interest. In other States elected

representatives must refrain from voting on matters connected with appointments, job losses and dismissals affecting them personally or affecting their spouses or families.

When local or regional elected representatives fail to fulfil the obligation to declare their interests and/or to refrain from voting and/or taking part in debates, the decisions taken by the council are considered unlawful in some cases and may be declared null and void in others.

In some countries elected representatives are prohibited from taking part as barristers, solicitors or agents in proceedings brought against the local authority.

Opinion of the CDLR

In the interests of sound local affairs management and financial openness in politics, it is essential for elected representatives called on to express an opinion on a matter in which they have a direct or indirect personal interest to be obliged to declare that interest. Depending on the circumstances and the legislation in force, the council will then decide whether or not it is appropriate for the elected representative to refrain from voting or even from taking part in the discussion on the subject.

The definition of direct interest must cover all financial interests other than those that exist between any citizen and his or her local authority (tax, the price of public services, etc.) and all advantages that might result from the decision in question. Where indirect interests are concerned, account should be taken of any such advantages which the decision might offer persons with whom the elected representative has family ties, professional relations or close business connections.

A stricter approach is desirable, stipulating for example that elected representatives should, throughout their term of office, provide information about any personal financial interests connected with the business of the local or regional authority.

Forms of liability for misconduct on the part of elected representatives

Unlike for national elected representatives, no state grants local or regional elected representative complete immunity. They may therefore be prosecuted like any member of the public for private acts. In one country, elected representatives may claim "exemption from jurisdiction", i.e. arrange to be heard by a court other than the one which has jurisdiction in their local authority area.

As a rule, unlawful acts by the authority cannot be directly attributed to elected representatives. Members of the executive may, however, incur personal liability in cases of gross negligence or if they serve personal interests. In one country members of the executive may take out insurance covering them for professional and civil liability.

By virtue of their particular status, local or regional elected representatives are specifically responsible for preserving the confidentiality of information acquired in the course of their duties. Similarly, in the countries in which elected representatives are required to declare their interests and refrain from taking part in related decisions and/or discussions, failure to

comply with these requirements may - as well as affecting the validity of decisions taken in this way - be regarded as an offence carrying a fine or even a prison sentence.

In one state, failure to attend plenary sittings is punishable by a fine.

Dismissal is a serious penalty imposed in several countries in order to punish gross negligence, malpractice or gross misconduct. In one state a three-month suspension may be imposed for some types of offence.

Failure to comply with the rules on incompatibility of duties is also a ground for dismissal.

The following cases of de facto resignation may be equated with dismissal: when an elected representative fails to take the oath of office after two successive notices to attend; when a member of a council is absent for three consecutive sittings without a valid excuse; when an elected representative refuses to perform a duty incumbent on him or her by law and, in one state, when a member of the regional parliament is absent for over a month without having applied for leave.

The procedure for imposing penalties varies from country to country. In some cases the penalty is automatic, while in others it is left to the discretion of the authority of which the elected representative in question is a member.

As a rule, the final decision lies with the authority concerned, the state representative exercising direct supervision over the authority (prefect) with the Ministry of the Interior; in some cases, it lies with a special tribunal. Some procedures necessarily involve a combination of decisions.

As a rule, resignation is subject to a special procedure (decision of the Municipal Council, notification of the Ministry of the Interior, whose approval is required), but no substantive conditions are laid down by law.

Opinion of the CDLR

It is noted that no state grants local or regional elected representatives complete immunity from legal proceedings. Elected representatives may not, however, be held personally liable for acts performed on behalf of the authority unless there has been gross negligence or misconduct.

In the event of a serious breach of the specific rules governing the conditions of office of elected representatives (repeated unjustified absence from sittings, incompatibility of duties, failure to comply with the rules on withdrawal, etc.), penalties prescribed by law, such as suspension or dismissal (with the possibility of replacing the elected representative) should apply, and there should be appropriate measures for safeguarding the smooth functioning of the authority in such circumstances. In the case of other types of offences (such as unlawful enrichment or fraudulent management) reliance on the traditional judicial penalties seems effective enough.

Working conditions

Elected representatives holding a full-time post

Mayors and other members of the executive are considered in some countries to hold a full-time post. It is usually the size of the authority, in terms of the resident population, which determines whether a post is considered to entail a full-time work load.

Elected representatives holding a part-time post

It is difficult to give an overall picture of the situation with regard to those elected representatives whose duties are not regarded as a full-time activity.

There are substantial differences depending on the size of the local or regional authorities and, within authorities, on the individual elected representatives and the positions they hold. There is also an appreciable difference between elected representatives with special responsibilities and others.

The average number of committees on which a local or regional councillor serves ranges from one to five. In one state committee chairmen are considered to perform part-time duties, while in another some members of the executive in the largest urban areas, other than the mayor and his deputies, are also regarded as performing part-time duties.

In one country all provincial elected representatives are considered to be doing a part-time job.

According to information supplied by four countries, the average time which local elected representatives devote to their duties ranges from six to 15 hours a week, but these are only rough averages and there is a wide variety of individual situations.

Opinion of the CDLR

It is understood that posts are designated as being equivalent to a full-time job only in the case of members of the executive (and, in certain countries, in the case of elected representatives with special responsibilities) and that the actual work load does usually correspond to that of a full-time job.

It is desirable that each authority, according to its size and resources, make adequate premises and, if possible, secretariat services, available to elected representatives for the performance of their duties, and provide them with specific documentation on local authorities. It is up to the local authorities to take the appropriate measures.

Training and information

For newly elected representatives

All the states except one provide training for newly elected representatives. The means used vary greatly from one country to another. In some cases the training is provided by

central government officials - from the level of government responsible for local or regional authorities - while in others each authority organises its own training. In many cases training courses are also run by national associations of local authorities and political parties.

In practice, a combination of these methods is often used. Moreover, the political parties have already played an important part in the training of candidates.

Some countries provide newly elected representatives with special documentation informing them in general terms of the rights and duties attached to their new posts.

On new legislation

When the laws governing the powers or activities of local or regional authorities undergo substantial changes, nearly all countries provide elected representatives with training/information on the practical implications which these changes will have for the performance of their duties. Either the same training methods are used as in the case of newly elected representatives or, in some cases, officials from the Ministry responsible for the new legislation present the new provisions in person.

Opinion of the CDLR

All newly elected representatives should be entitled to basic training in all the functions of the local authority, the workings of local government and the duties and responsibilities of elected representatives. This training may be provided in the form of courses or through the distribution of documentation, or by political parties.

Succinct documentation should also be available for candidates standing for election. In the event of substantial legislative changes, all elected representatives should be duly informed of the implications of the change in legislation for the management of the local authority. This information can be provided by higher authorities or by any other appropriate means. The time needed for this training should, if circumstances so warrant, entitle the elected representative to political leave.

It is up to each authority to decide, within the limits of the national legislation, whether the expenses incurred by elected representatives (travel, loss of earnings, etc.) for training activities should be refunded.

Access to appropriate, up-to-date documentation is a major prerequisite for the efficient performance of a local or regional elected representative's duties. It is essential, therefore, that there should be documentation to which all elected representatives, without exception, have easy access. Elected representatives who usually have limited time at their disposal, cannot make good use of too large a quantity of information; they need concise, clear documentation that is easy to use.

Equal representation

Legally speaking, no country discriminates between men and women in terms of either eligibility or status of elected representatives. The statistics available in seven countries show, however, that women are under-represented. This is clearly the result of the fact

that the female electorate came to politics relatively late, and is probably also due in part to social traditions. Measures should, therefore, perhaps be taken to encourage women to stand.

In most countries the legislation makes no specific provision for ensuring that the female population is better represented. In two countries political parties have, on their own initiative, set quotas for women on local electoral lists or taken other steps to encourage female candidates. In one country the law requires that each elected assembly be composed of representatives of both sexes, which means that the threshold is only one elected woman per assembly. In another country the law provides that, in the case of elections based on a first-past-the-post system, there must be at least 40% of elected representatives of each sex on "local committees" and that, in the case of elections based on proportional representation, an attempt must be made to ensure fair representation of both sexes.

Opinion of the CDLR

Although conditions of access to elected bodies are no less favourable for women than for men, women are generally under-represented in local politics. Measures to encourage women to stand would therefore seem warranted for the purpose of ensuring a fairer representation of both sexes on elected local bodies. This role should, in particular, be carried out by the political parties.

Section 2 – Model initiatives relating to the status of local elected representatives

General framework

a. Possible action by central authorities

Local elected representatives are given a simple and uniform legal framework governing their rights and obligations, accountability, guarantees and protection, remuneration and working conditions, supervision, disqualifications, termination of office and suspension. The framework is established by the central authorities, in consultation with associations of local elected representatives.

In addition to the legal framework itself, central authorities prepare model codes of conduct and make them available to local authorities. These model codes contain a list of compulsory provisions which local authorities must include in the codes of conduct adopted at local level and a list of model provisions that local authorities may, if appropriate, adapt and include in local codes of conduct. Compliance with the codes of conduct may be made compulsory by statute.

Central authorities grant citizens and local authorities access to information, by publication and analysis, particularly through the use of new information technology, of data on:

- the various legal instruments governing local elected representatives' performance of their duties;
- the various codes of conduct adopted by local authorities, so that a comparative analysis of them can be carried out;
- statistics concerning cases of corruption and other breaches of public ethics and public confidence in local elected representatives and public servants.

b. Possible action by local authorities

Local authorities:

- adopt codes of conduct for local elected representatives, if appropriate by adapting to the situation in the municipality concerned the model codes prepared by the central authorities and taking account of the suggestions made by different associations;
- ensure that the codes of conduct are distributed to elected representatives, the central authorities, other interested bodies and the public, using the available means, including information technology.

Disqualifications, termination of office and suspension

a. Possible action by central authorities

Central authorities provide a legal framework governing disqualifications, termination of office and the suspension of local elected representatives, which is tailored to the situation in each country (or region, in federal states) and based, as far as possible, on the following principles.

- i. Disqualification as a candidate or also after election may arise from:
 - legal, mental or financial incapacity when officially established according to law; in such cases the aim of disqualification is to avoid non-liability in the performance of duties;
 - a final criminal conviction for serious misconduct or a breach of public ethics; the period of disqualification depends on the gravity of the situation and the courts have substantial freedom to determine the length of the period;
 - a decision by Court as an accessory penalty;
 - the existence of a potential conflict of interest; for example, individuals shall not hold a position in which they would be supervising themselves or supervising a close relative;
 - the simultaneous holding of another elective office which would prevent the elected representative from fulfilling his or her responsibilities properly, according to law.

- ii. Early termination of office may be:
 - decided – straightforward resignation - by the person concerned;
 - decided by the courts, particularly in the case of serious misconduct in the performance of duties or a breach of public ethics;
 - acknowledged by the local authority or the relevant election office in the event of disqualification; the elected representative in question may contest the termination acknowledgement in the courts, which shall issue a ruling under emergency procedures.

- iii. Suspension of a local elected representative from office is not automatic if that person is under investigation but:
 - may exceptionally be ordered by the central authorities or by the electoral authority in very grave and emergency situations, but this decision is subject to revision by the court;
 - is ordered by the courts if continuation in elective office seriously threatens to hinder the judicial process or cause damage that is substantial or difficult to repair;

b. Possible action by local authorities

According to law, local authorities:

- inform the relevant body (court, election office, central authorities) of any incompatibility of which they become aware;
- give sanctions or request the body enabled by law to sanction the elected representative, according to law or local regulations adopted by the local authority according to law;

- in accordance with the law, suspend for a limited period – within a range established by law – a local elected representative who does not fulfil his or her obligations (repeated and unjustified absences, non-fulfilment of regulatory obligations, etc.); the decision may be contested in the courts by the elected representative; suspension by the collegial body may be for a limited period, or unlimited if the courts have been requested to order the termination of office of the elected representative;
 - ask the courts to rule on the termination of office of an elected representative, particularly in the event of serious misconduct or a clear breach of standards of public ethics, and suspend the representative until the courts issue a ruling.
- c. *Possible action by local elected representatives*[\[3\]](#)

Local elected representatives respect the rules and:

- avoid, as far as possible, any conflict of interest or incompatibility;
- make known any situation that may give rise to an incompatibility or conflict of interest as soon as it arises;
- do not hold other appointments which would hinder them from performing efficiently their functions as elected representatives;
- while respecting the choice of their voters and especially when elected on a list, avoid as far as possible changing their party membership and remaining in office.

3. Rights and obligations of elected representatives

a. *Possible action by central authorities*

Central authorities:

- establish the framework legislation setting the fundamental rights and obligations of local elected representatives;
- make known the rights and obligations of local elected representatives, using various means of circulating the available information;
- set up appropriate monitoring procedures.

b. *Possible action by local authorities*

Local authorities:

- take sanctions against the non-fulfilment of obligations by elected representatives in complete transparency and according to law and local statutory acts;
- survey the observance of the fundamental rights of local elected representatives by other elected -representatives, by local staff members and by citizens;
- within the limits of their legal powers, repair and punish any infringement of a local elected representative's rights.

c. *Possible action by local elected representatives*

Local elected representatives:

- fulfil all their obligations and exercise their rights with moderation and for the public good;
- declare their assets before and after their term of office;
- sign the municipal code of conduct and agree to observe it;
- encourage and promote any measure which fosters improvements in the operating performance of the services or departments coming under their responsibility and the motivation of the staff concerned;
- do not perform their functions or use the prerogatives of their office to further their own direct or indirect private personal interests or the private interests of individuals or groups of individuals, with the aim of deriving a direct or indirect personal benefit therefrom;
- declare any personal interest (property or family) in municipal matters and refrain from participating in any debates or from taking a stand on any matter in which they have a personal interest;
- observe budgetary and financial discipline, as defined by the national legislation and do nothing to misappropriate public funds and other public assets; they do not do anything that might lead to public funds or other public assets being used for direct or indirect personal purposes;
- refuse all personal gifts or favours from persons who make a request to the municipality;
- declare all gifts or favours received in their capacity as a representative of the local authority; any gift worth more than a certain value laid down in the municipal code of conduct legally belongs to the municipality;
- make public the grounds for all their decisions; if such grounds have to remain confidential, representatives explain why;
- promote all measures designed to increase transparency in the way they exercise their powers and the operation of the administrative departments for which they are responsible;
- oppose the appointment and promotion of local public servants and other employees on grounds other than merit and professional ability or for purposes other than departmental effectiveness;
- respect the independence, the powers and prerogatives of other political appointees and of local public servants and do not ask them to do anything which gives them direct or indirect personal gain or from which groups of people derive direct or indirect advantage (or to refrain from doing something in order to obtain such direct or indirect advantages); respect the decisions reserved by law or regulations to civil servants;
- reply openly to questions from citizens or the media about their exercise of office and do not reveal information that is confidential or concerns the private life of other persons;
- encourage and promote any measure which fosters openness concerning their powers, the exercise of those powers and the functioning of the services and departments under their responsibility.

4. Liability of elected representatives

a. *Possible action by central authorities*

Central authorities establish the general framework on liability of local elected representatives, individually or collectively as a body, for acts or omissions in the performance of their duties.

The framework is based on the following principles:

- any natural or legal person who has suffered unjustified damage as a result of an act or omission on the part of a local elected representative shall be entitled to reparation;
- the personal liability of local elected representatives is limited to cases of serious or intentional misconduct;
- in collegiate bodies, elected representatives shall not be held liable for any decisions to which they have opposed;
- there shall be no automatic sanction of local elected representatives without prior adversarial proceedings or appeal before the Court which suspends the decision ;
- there shall be some degree of specialisation by judges who deal with liability of elected representatives (specialisation of courts or special training for judges) or there shall be independent specialised administrative bodies which can give an opinion, at the request of judges, on cases in which local elected representatives are involved.

b. Possible action by local authorities

Local authorities:

- quickly and fully compensate parties injured by an act or omission on the part of their elected representatives;
- take action to recover costs from elected representatives who cause them damage through serious or intentional misconduct;
- hold roll-call votes as much as possible, using modern techniques if possible, and make public the elected representatives' votes;
- organise effective internal legal supervision, which may also provide legal advice to elected representatives who request it;
- consider collaborating with other municipalities to set up a risk-pooling arrangement;
- through risk-pooling arrangements or insurance companies, ensure cover against financial risk from their own civil liability and, where applicable, partial cover against risk arising from the civil liability of their elected representatives;
- provide public access to full information about local-authority liability and liability of elected representatives.

c. Possible action by local elected representatives

Local elected representatives:

- perform their responsibilities diligently and honestly;
- minimise the risk of substantial or irreversible damage to third parties resulting from an act or omission on their part;
- take out at least partial cover against civil liability, through risk-pooling organisations or private insurance;

- provide the authorised bodies with full information regarding cases in which they are liable.

5. Remuneration, working conditions and careers of local elected representatives

a. Possible action by central authorities

Central authorities establish a framework governing the remuneration, working conditions and careers of local elected representatives, based on the following principles:

- the majority of local elected representatives holds office without remuneration;
- however, local elected representatives shall not suffer material damage as a result of performing their duties: they shall be reimbursed for expenses incurred and loss of professional earnings;
- there shall be a general framework for the remuneration of elected representatives who work for municipalities full time, but the local authority shall have considerable freedom to set the level of remuneration;
- there shall be provision for adapting the work schedule of persons who become local elected representatives; this shall not penalise companies which employ elected representatives: in the event of damage, the local authority shall make it good, either itself or through a specially created fund;
- persons who have completed a full-time term of office shall be helped to resume employment: incentives shall be available to companies which keep an elected representative's post open for the period of his or her full-time elective office;
- allowances and remuneration paid to local elected representatives shall be taken into account in the calculation of taxes, contributions and social benefits;
- the amounts of allowances and remuneration received by local elected representatives shall be made public; the central authorities shall prepare national statistics on these allowances and make them available to the public, particularly by using new information technology;
- elected representatives, particularly those holding executive positions, are prohibited for a limited period from working for certain employers after their term of office has expired, according to law.

b. Possible action by local authorities

Local authorities:

- reimburse local elected representatives for expenses and loss of earnings incurred in the performance of their elective duties;
- establish, where necessary, the amounts of allowances and remuneration paid to elected representatives who work full time for the municipality, within the limits established by law;
- local elected representatives do not set their own remuneration; there are independent panels set up by municipalities with participation by independent experts, representatives of certain qualified NGOs and/or private audit firms.
- establish, as far as possible, working hours compatible with the work schedule of voluntary elected representatives;
- if necessary, take out insurance or subscribe to a special fund to cover damage to third parties caused by adaptation of local elected representatives' work schedule;

- pay at least part of any costs of vocational retraining or updating of skills for elected representatives who have held full-time elective office;
- provide the equipment and staff needed for the work of local elected representatives (premises, secretarial staff, computer equipment and, if necessary, transport);
- publish, particularly using new information technology, the amounts of allowances, remuneration and reimbursements received by local elected representatives.

c. Possible action by local elected representatives

Local elected representatives:

- declare honestly and provide proof of expenses, loss of earnings and material benefits resulting from performance of their duties;
- refrain from actions which gain them occupational advantage in public or private entities which they supervise, with which they enter into contractual relations or which were set up while they were in office and as a result of their exercise of official responsibilities, and avoid working for such companies when their term of office expires – at least during a reasonable time period after their terms of office or of their functions have expired.

6. Training, informing and co-operating with local elected representatives

a. Possible action by central authorities

Central authorities:

- ensure that there is a general framework for the training of elected representatives, by providing a training network or covering part of the cost of training;
- prepare legal and management manuals for new elected representatives;
- prepare training modules and distribute them to training centres which request them, using information technology;
- offer a legal advice service to local authorities which request it;
- encourage the sharing of experience among local elected representatives through seminars, conferences and online discussion forums;
- prepare information tools and make them available to local elected representatives, preferably using information technology: statistics on demography, finance and the standard of services in the country's local authorities; management and benchmarking tools for local public services;
- encourage and assist private or local authority initiatives regarding the training of local elected representatives;
- create a framework for, encourage and take part in the various forms of inter-municipal, inter-regional and international co-operation designed to identify best practices regarding the status of local elected representatives;
- using mainly the new information and communication technologies, they make available to the public the national legislation and provisions of international treaties concerning the status of local elected representatives, as well as the best

European practices and recommendations of international organisations in this field.

b. Possible action by local authorities

Local authorities:

- provide training for elected representatives;
- distribute information needed by elected representatives for the performance of their duties;
- collect and forward to the central authorities the information necessary for compiling statistics and -creating comparative management tools for local authorities;
- adapt the training modules made available by the central authorities to the needs of their own elected representatives;
- produce and supply to elected representatives a selection of information resources best suited to the characteristics of the particular authority and the special needs of its representatives;
- take part in various experience-sharing activities at local, regional, national and international level regarding the status of local elected representatives.

c. Possible action by local elected representatives

Local elected representatives:

- take training courses after being elected for the first time;
- keep constantly abreast of legislative developments and new management tools;
- ask their authority for the information they need to perform their duties properly;
- play an active part in experience-sharing activities organised by central or local authorities.

Section 3 – European code of conduct for the political integrity of Local and Regional elected representatives

I – Scope

Article 1 – Definition of an elected representative

For the purposes of this Code, the term “elected representative” means any politician holding a local or regional authority mandate conferred through a principal election (election by direct suffrage) or secondary election (election to executive office by the local or regional council).

Article 2 – Definition of functions

For the purposes of this Code, the term “functions” means a principal or secondary elective mandate and all functions performed by an elected representative under that mandate.

Article 3 - Object of the code

The object of this Code is to specify the standards of behaviour expected of elected representatives in the performance of their duties and to inform citizens of the standards of behaviour that they have a right to expect of their elected representatives.

II – General principles

Article 4 - Primacy of law and the public interest

Elected representatives hold office under the law and must at all times act in accordance with the law.

In performing their functions, elected representatives shall serve the public interest and not exclusively their direct or indirect personal interest or the private interest of individuals or groups of individuals with the aim of deriving direct or indirect personal benefit therefrom.

Article 5 – Objectives of fulfilling a mandate

Elected representatives shall undertake to perform their functions with diligence, openness and a willingness to account for their decisions.

Article 6 – Constraints of fulfilling a mandate

In performing their functions, elected representatives shall respect the powers and prerogatives of all other political appointees and all public employees.

They shall not encourage or help any other political appointee or any public employee to breach the principles set forth herein when performing their functions.

III - Specific obligations

1. Taking of office

Article 7 – Rules governing election campaigns

Candidates' election campaigns shall aim to provide information and explanations on their political programmes.

Candidates shall not seek to secure votes by any means other than persuasive argumentation and debate.

In particular, they shall not attempt to obtain votes by slandering other candidates, by the use of violence and/or threats, by tampering with electoral rolls and/or the results of the ballot or by granting or promising favours.

2. Holding of office

Article 8 – Ban on favouring

Elected representatives shall not perform their functions or use the prerogatives of their office in the private interest of individuals or groups of individuals, with the aim of deriving a direct or indirect personal benefit therefrom.

Article 9 – Ban on exercising authority to one's own advantage

Elected representatives shall not perform their functions or use the prerogatives of their office to further their own direct or indirect private or personal interests.

Article 10 – Conflict of interests

When elected representatives have a direct or indirect personal interest in matters being examined by local or regional councils or by executive bodies, they shall undertake to make those interests known before deliberations are held or a vote is taken.

Elected representatives shall abstain from any discussion, deliberation or vote on a question in which they have a direct or indirect personal interest.

Article 11 – Limit on concurrent holding of two or more appointments

Elected representatives shall comply with any regulations in force aimed at limiting the concurrent holding of two or more political appointments.

Elected representatives shall not hold other political appointments where this prevents them from performing their functions as an elected representative.

Nor shall they have or hold functions, elective mandates, occupations or official appointments which entail supervision of their own functions as an elected representative or which they themselves are supposed to supervise in their capacity as an elected representative.

Article 12 – Exercise of discretionary powers

In exercising their discretionary powers, elected representatives shall not grant themselves any direct or indirect personal advantage, or grant any individual or group of individuals an advantage with the aim of deriving a direct or indirect personal benefit therefrom.

Detailed grounds shall be given for any decision, specifying all the factors on which the decision is based, in particular the applicable rules and regulations, and showing how the decision complies with those rules and regulations.

Failing any rules and regulations, the grounds for the decision shall include elements such as to show its proportionality, fairness and conformity with the public interest.

Article 13 – Ban on corruption

In performing their functions, elected representatives shall refrain from any conduct qualifying, under the national or international criminal law in force, as bribery or acceptance or soliciting of bribes.

Article 14 - Observation of budgetary and financial discipline

Elected representatives shall undertake to observe budgetary and financial discipline, which guarantees the proper management of public money, as defined by the relevant national legislation.

In fulfilling their duties, elected representatives shall not do anything to misappropriate public funds and/or grants. They shall not do anything that might lead to public funds and/or grants being used for direct or indirect personal purposes.

3. Relinquishing of office

Article 15 – Ban on securing certain appointments

In performing their functions, elected representatives shall not take any measure such as to grant themselves a future personal professional advantage once they have relinquished their functions:

- in public or private bodies over which they exercised supervision while performing those functions;
- in public or private bodies with which they established a contractual relationship while performing those functions;
- in public or private bodies which were set up during their term of office and by virtue of the powers entrusted to them.

4. Means of supervision

1. Taking of office

Article 16 – Limitation and declaration of campaign expenses

Candidates shall keep their spending on election campaigns in proportion and within reasonable limits.

They shall diligently comply with any measure under the regulations in force requiring the source and amount of the income which they devote to campaign financing and the nature and amount of their spending to be made public.

Failing regulations in force on the subject, they shall provide this information simply on request.

2. Holding of office

Article 17 – Declaration of interests

Elected representatives shall diligently comply with any measure under the regulations in force requiring their direct or indirect personal interests, their other mandates, functions or occupations, or changes in their assets to be made public or monitored.

Failing regulations on the subject, they shall provide this information simply on request.

Article 18 – Compliance with internal and external supervisory measures

In performing their functions, elected representatives shall not hinder the implementation of any supervisory measure which the relevant internal or external authorities may, with due justification and openness, choose to take.

They shall diligently comply with any immediately enforceable or final decision by those authorities.

When giving grounds for their acts or decisions subject to such supervision, they shall expressly mention the existence of the supervisory measures and specify the authorities competent for implementing them.

5. Relations with the public

Article 19 – Publishing and giving grounds for decisions

Elected representatives shall be accountable to the whole of the local population throughout their mandate.

Elected representatives shall give detailed grounds for any decision which they take, specifying all the factors on which the decision is based, in particular the applicable rules and regulations, and showing how the decision complies with those rules and regulations.

Where that information is confidential, the reasons for such confidentiality shall be explained.

Elected representatives shall diligently respond to any request from the public concerning the performance of their functions, the grounds for their action, or the functioning of the services and departments coming under their responsibility.

They shall encourage and promote any measure which fosters openness concerning their powers, the exercise of those powers and the functioning of the services and departments coming under their responsibility.

6. Relations with local government staff

Article 20 - Appointments

Elected representatives shall undertake to prevent any appointment of administrative staff based on principles other than recognition of merit and professional abilities and/or for purposes other than the needs of the department.

In matters of staff appointments or promotions, elected representatives shall take an objective, reasoned decision, showing due diligence.

Article 21 – Respect for the role of local government staff

In performing their functions, elected representatives shall show respect for the role of the local government staff reporting to them, without prejudice to the legitimate exercise of their hierarchical authority.

They shall not ask or require a public employee to take or omit to take any measure such as to give themselves a direct or indirect personal advantage or give an advantage to individuals or groups of individuals with the aim of deriving direct or indirect personal benefit therefrom.

Article 22 – Promotion of the role of local government staff

In performing their functions, elected representatives shall ensure that the role and tasks of the local government employees reporting to them are promoted to the full.

They shall encourage and promote any measure which fosters improvements in the operating performance of the services or departments coming under their responsibility and the motivation of the staff concerned.

7. Relations with the media

Article 23

Elected representatives shall respond diligently, honestly and fully to any request from the media for information concerning the performance of their functions but shall not provide any confidential information or information concerning the private lives of elected representatives or third parties.

They shall encourage and promote any measure which fosters media coverage of their powers, the performance of their functions and the functioning of the services and departments coming under their responsibility.

8. Information, dissemination and awareness-raising

Article 24 – Dissemination of the code to elected representatives

Elected representatives shall undertake to ensure that they have read and understood all of the provisions of this code and the regulations referred to herein, and shall declare that they are willing to be guided by the provisions of the code.

Article 25 – Dissemination of the code to the public, local government staff and the media

Elected representatives shall encourage and promote any measure which fosters dissemination of this code to the staff reporting to them, the public and the media, and which heightens those persons' awareness of the principles contained herein.