

**CDDG RAPID RESPONSE SERVICE No. 44
ON THE LEGAL PERSONALITY AT LOCAL LEVEL**

Questionnaire submitted by the delegation of Ukraine

NOTE from the CDDG Secretariat to responding delegations:
please, tick the box below if applicable

- we oppose communication of our responses to a delegation other than that of the requesting country.

Context

Following the request of the Specialised Parliamentary Committee on Local Self-Government, the Council of Europe is called to provide extended and comprehensive support on the issues concerning legal personality at local level in Ukraine.

The principle of a legal personality reform at local level has been discussed among Ukrainian stakeholders in recent months in the context of the preparation of (i) a new version of the basic law on local self-government and (ii) Constitutional amendments on decentralisation.

The project foresees to grant to **the local communities** – and no longer to the **organs of authority (councils or their executive bodies** as it is currently the case in Ukraine) – the legal personality, so that **local communities** would be recognised as a subject of legal rights and responsibilities.

In this context, feedback from members of the European Committee on Democracy and Governance (CDDG) would be appreciated on the six specific questions listed below.

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

The territory of the Republic of San Marino is divided into nine municipalities (called "Castelli"), namely: Città di San Marino, Borgo Maggiore, Serravalle, Acquaviva, Chiesanuova, Domagnano, Faetano, Fiorentino, Montegiardino. The "Castelli" are territorial entities.

Article 1, paragraph 2 of Law no. 158 of 24 September 2020 reads as follows: "Each "Castello" is an institutional and territorial entity, to which the law attributes legal personality, in addition to administrative, representative and proposal functions concerning the territory to which the entity refers, also for the purposes of implementing the principle of subsidiarity. This principle is expressly recognised in the context of international European cooperation and constitutional traditions common to European States, for the purposes of achieving an effective administration that meets the citizens' needs"

<https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/scheda17169796.html>

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

The State has legal personality when it is sued or when it establishes property relations. (See answer to question no. 5.)

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

Given its very limited territorial extension (64 Km2), in the Republic of San Marino the "Castello" is the only territorial entity.

4. In case intermediate-level communities (regions, subregions, counties...) are not granted legal entity status, **which authority has such status at these levels?** There are no intermediate-level local communities (see answer no. 2)

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

The State has legal personality by virtue of a provision already contained in the Statutes dating back to 1600 (Book I, Section XXXVI). In San Marino legal system, when the State establishes property relations and exercises legal rights and responsibilities, it is called "Eccellenissima Camera". In this case, the State is represented by the Government Syndics. They are two members of Parliament (called Great and General Council) and are appointed by Parliament for the duration of the legislature. The Government Syndics represent the State (Eccellenissima

Camera) in legal proceedings and in all acts involving the acquisition of immovable property in favour of the State, as well as in acts involving the disposal of property owned by the State and in all acts related financial transfers involving any State commitments.

Book I of the Statutes of 1600 contains several provisions relating to the main constitutional bodies of the State. Over time, these provisions have been reformed by constitutional laws and in any case by hierarchically superior laws.

<https://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/scheda17009068.html>

The territorial entities - the "Castelli" - are currently governed by Law no. 158 of 24 September 2020. This Law attributes legal personality to them.

6. In case in your country the concept of "municipality" or its analogue is stipulated in the legislation, is this concept applied to a community or a territorial unit? Or does it apply only/also to a local self-government authority (councils or their executive bodies)?

The "Castelli" are territorial entities. The territory of the "Castello" is not only the limit of the jurisdiction exercised by its bodies (Township Council and Head of the Township Council), but an element constituting the body itself. The bodies governing the "Castello" represent the residing population.

Please refer to the answer to question no. 1 above.

Prepared by: Institutional Secretariat through the Secretariat of State for Internal Affairs of the Republic of San Marino

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