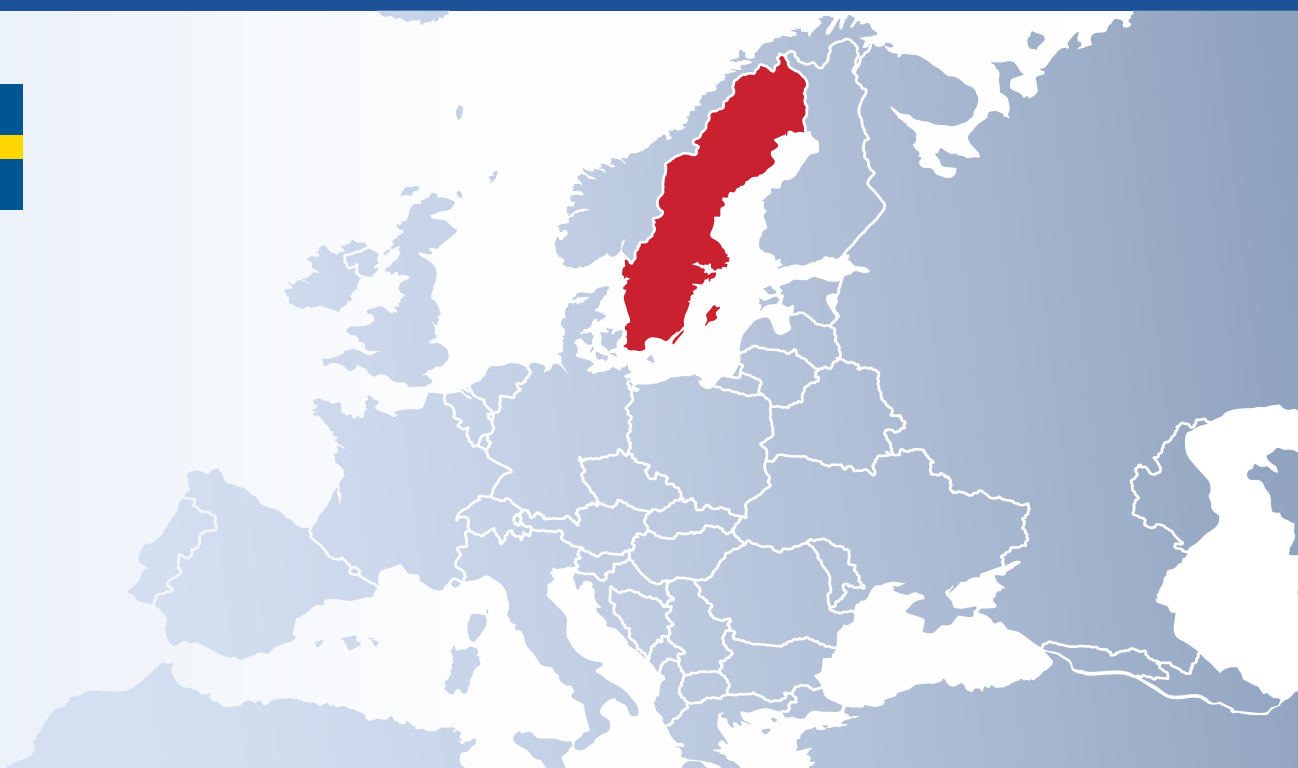


LEGAL PERSONALITY AT LOCAL LEVEL:

SWEDEN Country Case



Swedish-Ukrainian Project
"Support to Decentralization in Ukraine"



Swedish Association
of Local Authorities
and Regions



Швеція
Sverige

Following the request of the Ukrainian Specialised Parliamentary Committee on Local Self-Government, the Council of Europe is providing extended and comprehensive support on the issues concerning legal personality at local level in Ukraine. The present report was prepared in the framework of the Swedish-Ukrainian Project “Support to Decentralization in Ukraine” following the invitation of the Council of Europe. The document is based on contributions from Ms Helena LINDE, Senior Legal Advisor, Department of Law, Swedish Association of Local Authorities and Regions (SALAR). The document is structured in accordance with the questionnaire formulated by the Specialised Parliamentary Committee.

SWEDEN

1	Population	10.4 millions
2	Size	450 295 km ²
3	National Day	6 June
4	Form of state government	Unitary parliamentary constitutional monarchy
5	Administrative-territorial system, quantity of municipalities	Sweden is divided into 290 municipalities and 21 regions
6	Parliament, quantity of Members of Parliament, term	Riksdag is a unicameral legislature with 349 members (riksdagsledamöter) with 4 year terms
7	GDP (USD)	563 882 millions
8	Human Development Index	0.945

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...)?**

Each one of 290 municipalities and the 20 regions have legal personalities. They have right to act in their own name, implicating that each one of them can acquire rights and have obligations. They can, among other things, enter into agreements, have employed staff, have debts and even be sued in court. They also have taxation authority to finance the tasks they perform.

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

Yes – but not overlapping the integrity of the local and regional authorities.

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...)?**

Each level of the multilevel governance system in Sweden is built on democratic control organized in three levels. This gives a high level of independence.

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

Not relevant for Sweden.

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 Constitution, primarily in Chapter 1 and 14, stipulates the status of municipalities and regions. In the Municipal Act certain provisions clarify the limits of local self-governance.

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

The notion municipality applies to the territorial unit.

7. ***May bankruptcy proceedings be instituted against a local community or "administrative territorial unit" in your country? (yes or no)***

Theoretically yes – but in reality, it is not likely to occur. This is partly due to the fact that the Constitution grants a municipality the right to tax its citizens. This is more theoretically a sort of guarantee. Considering that the Swedish municipalities and regions are economically stable and the bankruptcy situation has not really been relevant – at least not so far.

There are although a very limited number of municipalities that are facing severe challenges. The matter of how these weak municipal economies can be handled has been a subject for discussion in a few of the government's public investigations. This has not led to any changes of the legislation so far – and it is reasonable to believe that problems of this sort would be handled in the form of negotiations. Within the ministry of Finance, a special delegation has recently been created with the aim to create practical support.

8. ***If you answered "yes" to question No.7, please answer the following question. Do general bankruptcy proceedings applicable to other legal entities apply to local communities or "administrative territorial units" in your country? If any special proceedings are in place, what are key criteria of bankruptcy of a local community or "administrative territorial unit" and three to four special aspects that make bankruptcy proceedings against local communities or "administrative territorial units" different from bankruptcy proceedings against other legal entities?***

It is theoretically possible to handle a bankruptcy proceeding within the current legislation in the same way as in relation to another legal entities – but the outcome of such a proceeding would not be of gain to anyone – except perhaps the lawyers involved!!

9. ***Do the laws of your country provide for suspension of local self-government authorities of a local community or "administrative territorial unit" (local councillors or executive bodies) from the management of affairs when the local community or "administrative territorial unit" enters into voluntary administration? (yes or no)***

Voluntary administration is not a legal option.

The framework for audit in The Municipal act provides a legal ground to suspend elected executive representatives that profoundly has failed their mission. This is more to be considered as an ultimate option that rarely (if ever) is applied.

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

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

All members of a municipality (e.g. citizens as well as owners of fixed property within the municipal borders) have access to a legal instrument that provides a legality review of municipal decisions. When a municipality acts according to civil law the possibilities to act against the municipality is open to anyone who has a cause to file a lawsuit.

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

Yes, there is a framework for this. Its complex – and can be elaborated on demand.

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

The municipality is the legal person – the right to act on its behalf is defined by the municipalities regulations and individual delegations to elected representatives and officials.

14. ***Who can act on behalf of a local community or “administrative territorial unit” directly in court? On what grounds? Do the laws of your country allow that a local community or “administrative territorial unit” is represented in external relations (in court, for example) by the State or a government authority?***

The Municipal Act states that the executive board has the authority to represent the municipality in court. This power can be executed by a proxy in certain cases.

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

Not relevant.

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

Not relevant.

FOR NOTES

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