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Main Directions of Development of Local Self-Government in Ukraine

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Abstract

The purpose of the article is to identify current problems and issues related to the formation and development of local self-governance in Ukraine, as well as to analyze the concept of local self-government and its features. The article uses a set of scientific methods, namely: terminological, system-structural, formal-logical, comparative-legal. The theoretical basis of the study are the works of Ukrainian and foreign scientists, the Constitution of Ukraine and the European Charter of Local Self-Government. The scientific novelty of the article is that it highlights a comprehensive study on the development of local government in the light of its modernization and integration, taking into account the latest international trends in municipal governance and domestic social transformations. The paper also proposes some solutions for building efficient and effective local self-government in Ukraine. According to the results of the study, the following conclusions were drawn: based on the experience of other West European countries, the issue of implementing economic, social and political reforms in Ukraine should be considered in the light of European integration; effective implementation of this course requires the following coordinated measures from the authorities at all levels: implementation of major institutional changes; reforming the principles and methods of work, including training, retraining and the professional development of personnel; providing financial and economic opportunities for stimulating the development of local self-government; the defectiveness of legal instruments and lack of a clear financial mechanism for implementing local self-government reform (the latter is formal, imitative nature), corruption in state authorities and local self-government bodies, no strategic vision of the country's development – all of these delay the modernization of local self-government in Ukraine

Keywords:

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Introduction

Local self-government is one of the fundamental democratic principles behind the constitutional system in Ukraine. That is why the processes of its constitutional reform are the most important factors in the development of the entire system of Ukrainian statehood. This issue is particularly important nowadays, when calls for federalization, violation of the constitutional order and destabilization of power resonate.

The Constitution of Ukraine [1] needs to define a decentralized model of government, which will envisage the formation of a comprehensive system of local self-government at all levels of the country's territorial structure, and the broadening of the powers, resources and responsibilities of local self-government. This will set out the conditions for achieving greater autonomy in making important managerial decisions regarding the sustainable and balanced development of the regions and in solving other issues of local importance.

The relevance of analyzing the challenges stems from the need to improve the theory and practice of modern state building caused by transformations in the political system and is also connected to the implementation of administrative, territorial and regional reforms as well as the introduction of constructive social partnership between the center and the regions. The success of all sectoral reforms depends on the successful reformation of local self-government, since it should ensure the actual participation of Ukrainian citizens in transformations that are pending.

It is important to determine the ways of developing a system of local self-government, which requires a thorough understanding of municipal policy and its conceptual foundations, as outlined in the Constitution of Ukraine [1] and the European Charter of Local Self-Government [2]. This necessitates a comprehensive analysis of the formation and functioning of self-government institutions.

The purpose and objectives of the study. This article aims to comprehensively analyze the problems related to the development of local self-government in Ukraine. There are a number of items that have to be reconciled in the course of this research:

- to examine the system of principles and elements of a local self-government system;
- to analyze the formation and running of self-government institutions;
- to explore topical problems and challenges related to the development of local self-governance in Ukraine.

Results and Discussion

Local self-government belongs to the democratic principles of public affairs management. It is created on the idea of promoting community values;

namely, independence (autonomy) and a population's active participation in administering community affairs. Local self-government brings administrative management closer to the population and is the most transparent decentralized form of government.

As a complex and multifaceted phenomenon, local self-government is:

- the basis of constitutional order and one of the important principles underlying the organization and governance in the state, as well as a necessary characteristic of a democratic society;
- a form of democracy, which, in accordance with Article 5 of the Constitution of Ukraine [1], constitutes the realization of power by the people: directly and through the bodies of local self-government. At the same time, the latter occupies a separate (distinct) place in the political system and is not a part of the state mechanism, which gives grounds to consider local self-government as a separate form of the realization of power by the people;
- the right of a territorial community to independently resolve issues of local significance within the framework outlined by the Constitution and laws of Ukraine [3].

There are various definitions of "local self-government". Some authors point out that local self-government simultaneously combines state and public elements, and that bodies of local self-government perform two kinds of duties: those relating to self-government and also those delegated to them by state authorities [4].

According to Article 140 of the Constitution of Ukraine [1], *local self-government* is the right of a territorial community – the residents of a village (or a voluntary association – a rural community – created by the residents of several villages), a settlement or a city to independently resolve issues of local importance within the framework of the Constitution and laws of Ukraine. This definition does not clearly define such an important aspect of local self-government as its actual ability to manage local affairs [1].

Article 2 (Part 1) of the Law of Ukraine "On Local Self-Government in Ukraine" [5] provides a normative definition of this concept: "Local self-government in Ukraine is a state-guaranteed right and real ability of a territorial community – residents of a village or members of a voluntary association of villagers created by several villages, as well as residents of a settlement or city – to independently or within the responsibility of bodies and officials of local self-government resolve issues of local significance within the framework of the Constitution and laws of Ukraine" [5]. An analysis of the notion of local self-government and its peculiarities makes it possible to define local self-government as the right and real ability of local authorities to

independently manage a part of state affairs within the framework of the law in the interests of the population and to regulate this part.

The definition of local self-government in the Constitution and laws of Ukraine, no matter how perfect, is far from exhaustive as far as the content of this socio-political phenomenon is considered; therefore, it cannot be limited to the state-guaranteed right of territorial communities and self-governing-bodies they choose to independently decide on a part of public affairs [3].

Local self-government as a principle of organizing government directly from the ground up, in accordance with Article 2 of the European Charter, is embodied in the Constitution of Ukraine [1] (Article 7), and, consequently, has become one of the constitutional pillars of our state.

The *legal autonomy* of local self-government lies in the fact that they have their own powers as defined by the Constitution or the law. These powers, as stated in the European Charter, should be total and exclusive, that is, such that do not simultaneously belong to other bodies of authority. Within their powers, local self-government and its bodies have full freedom of action to implement their own initiatives regarding any matter assigned to the authority of local self-government. Citizens of Ukraine exercise their right to participate in local self-government by their belonging to respective territorial communities. Any restrictions on the right of Ukrainian citizens to participate in local self-government are prohibited [3].

The local self-government and its bodies should be able to define their own internal structure so that it meets local needs and provides effective management. Here we speak about *organizational autonomy*. Local self-government bodies operating within the law are not subject to the authority of other bodies, and any administrative control over their activities is possible only to ensure the lawfulness and constitutional principles of local self-government.

The *material and financial autonomy* of local self-government involves the right of territorial communities and their bodies to own use and dispose of property in their possession – the so-called communal or municipal property – as well as their own financial means sufficient for the realization of the powers of local self-government and its bodies. At least part of the said funds should originate from local taxes and fees, whose rates are to be determined within the bounds of the law by the local self-government bodies themselves [4].

The Constitution of Ukraine and the Law of Ukraine “On Local Self-Government in Ukraine” [5] (Article 4) define the organization and functioning of local self-government in Ukraine. The system of local self-government principles is not limited to

the principles outlining its legal, organizational, material and financial independence (autonomy) [5]. The law also delineates other principles that can be divided into two groups:

- those that are unique to local self-government bodies and significantly differentiate them from local executive bodies (e.g., accountability and responsibility to territorial communities, judicial protection of their rights etc.);

- those that are universal – typical for both local self-government bodies and local executive bodies (e.g., democracy, transparency, a combination of local and state interests etc.).

The main ways of resolving issues relating to the existing local self-government system are defined in the approved by the Cabinet of Ministers of Ukraine on April 1, 2014, “The Concept of Local Self-Government and Territorial Organization of Power Reform in Ukraine” [6]. The main changes can be drawn as follows: defining a thorough territorial basis for carrying out the activities of local self-government bodies and executive authorities; producing proper material, financial and organizational conditions for ensuring the implementation of inherent and delegated powers of local self-government bodies; division of powers between local self-government bodies and executive authorities at different levels of the administrative and territorial system based on the principles of subsidiarity and decentralization; maximum involvement of the population in managerial decisions, promoting the development of direct democracy [6]. The adoption of such Laws of Ukraine as “On the Cooperation of Territorial Communities”, dated June 17, 2014, No. 1508-VII [6]; “On the Voluntary Association of Territorial Communities”, dated February 15, 2015, No. 157-VII [7]; “On the Principles of State Regional Policy”, dated February 5, 2015, No. 156-VIII, targeted the development of a system of local self-government. The adoption of new legislative acts resulted in the introduction of changes to the conceptual notion of “local self-government system”, which were reflected in the amendments (adopted on February 5, 2015) to the Law of Ukraine “On Local Self-Government in Ukraine” [7].

In 2015, after the adoption of the Law of Ukraine “On the Voluntary Association of Territorial Communities” [7], Article 6 (“Territorial communities”) of this specialized law was amended. The article now states that territorial communities can be united into one rural, settlement or urban territorial community, form common bodies of local self-government and choose the village elder, settlement head or city mayor, respectively. Such voluntarily united territorial communities may withdraw from a united territorial community in the manner prescribed by law.

The opportunity for creating voluntary associations of territorial communities not only of adjacent villages, but of settlements and cities as well has been introduced into the present-day legal and regulatory field. This provision is also specified further by stating that “the united territorial community where a city is appointed to be the administrative center is defined as urban territorial community, the community where a settlement is appointed to be the center is settlement territorial community, and the community where a village is appointed to be the center is rural territorial community” [7]. That is, a change of approach to the definition of boundaries of a territorial community has taken place: it is now seen as an entity wider than one populated locality such as village, settlement or city. Accordingly, conditions are created for revising the existing territorial basis underlying the organization of local self-government, as well as for updating the “basic level” of administrative-territorial system constituted by communities as administrative-territorial units. What remains unchanged is the status of territorial community as the primary subject of local self-government, the main carrier of its functions and powers embodied in a territorial community of a village, settlement or city [8].

Raising the current problems pertaining to the establishment of operational, efficient and economic local self-government in Ukraine, it should be remarked that in Europe, local self-government is seen as a social mechanism that guarantees democratic government, whereas in Ukraine local self-government is not only a tribute to democracy, but also, to a large extent, an effective managerial mechanism. Local self-government institution has a complex nature as far as society and state are concerned. As a component of society, local self-government objectively finds itself in “constructive opposition” to the state, especially in matters related to the protection of local community’s interests. This circumstance needs to implement one of two options: either to construct a complex procedure for reconciling the interests of state and territorial communities, or to increase state authorities’ pressure on local self-government. Thus, a contradiction arises: on the one hand, in order to ensure its stability, the state is objectively interested in strengthening local self-government; on the other hand, it often responds to “constructive opposition” with pressure implemented through administrative mechanisms. Another contradiction has become clear in the process of reforming local self-government (“reform from the top down”): it concerns the methods and approaches used in the execution of local self-government powers. By its nature, local self-government contradicts the dictate of the state and can only develop on condition of its freedom. Within the framework of a unified administrative system, local self-government and state

administration is incompatible. This is indicated by the Constitution of Ukraine [1], which does not include local self-government bodies in the state’s system of authority. Local self-government must grow and develop “from the bottom up”, organically/naturally, with appropriate state support and under its control. In other words, local self-government cannot be formed without state support, but at the same time, it needs reliable protection from the state [9].

Local self-government is the basis of a constitutional system – it means we recognize establishing a democratic-decentralized-governance system founded on the principle of the independence of territorial communities and local self-government bodies in solving all issues of local importance. According to Article 5 of the Constitution of Ukraine [1], the people exercise power directly as well as through the organs of state authority and bodies of local self-government. It is clear from this constitutional provision that local self-government bodies do not belong to a single unified state mechanism; therefore, local self-government can be considered as a separate form of the realization of power by the people.

Talking about local self-government we realize it’s extremely important role of linking society and the system of state administration, between contractual self-regulation and self-organization on the one hand, and on the other hand, compulsory regulation of social relations by the state which uses its power to achieve this – it promotes the independent development of democracy. Effective functioning of local self-government bodies is only possible in the condition of developed civic society, as every citizen should not only become aware of his/her personal responsibility, but also be prepared to take these duties upon himself/herself when solving local community problems [10].

The development of local self-government bodies which constitute a factor in the mechanism of local self-organization and solving these problems are key to the success and effectiveness of public administration at its basic level of interaction with communities and individuals. Optimizing a local self-government institution in Ukraine and bringing it to the European standards level is only possible through the establishment and implementation of its legal, organizational and financial autonomy [3].

The legal autonomy of a local self-government body consists in the constitutional and legislative recognition of the rights and powers granted and delegated to it. These powers, as outlined in the European Charter of Local Self-Government, should be full and exclusive, that is, these powers do not simultaneously belong to other bodies of authority. Within the limits of its authority, a local self-government body has full freedom to act on its own initiatives regarding any matter assigned to its competence. This

rule should also apply in the case of delegated powers: in exercising them, a local self-government body must be free to adapt these to local conditions. Since Ukraine is a member of the Council of Europe, the institution of local self-government should be regulated in accordance with the European Charter of Local Self-Government [2], which our state has joined. As stipulated by the European Charter of Local Self-Government [2], in Ukraine the main powers and functions of local self-government bodies are defined by the Constitution of Ukraine and its legislation [3].

At the level of local self-government, the functions and powers of its bodies have to be streamlined, eliminating their duplication and rationalizing their distribution. Operational methods of local self-government bodies are also in need of improvement, to ensure that they correspond to its principles.

There is also a lack of trained personnel, especially in rural and territorial communities as well as the communities of small towns. The problem of synchronizing the mechanisms of public administration, local self-government and self-organization, needs to be more researched, since the lack of coordination between their activities leads to wasting already limited resources. Talking about the municipal reform in Ukraine, we can notice a lack of readiness demonstrated by a managerial elite, including that of the local level; absence of state constructed ideology; loss of municipal managerial traditions; etc. So, in order to construct operational and efficient local self-government it is necessary [11]:

- to differentiate between the competences and powers of state authorities and local self-government, as well as between different elements of a local self-government system, based on the subsidiarity principle;
- to present regional self-government or develop a mechanism for the identification and realization of territorial communities' common interests;
- to determine in accordance with the competence and functions exercised, on a long-term basis, the sources of local budgets' revenue, providing a legal mechanism for the independent formation of the latter on the grounds of social standards approved by the government;
- to ensure that local budgetary finance is sufficient for the quality provision of legal and managerial services guaranteed by law;
- to outline control mechanisms which can be used by representative authorities and the public to

monitor the quality of law-guaranteed services provided by local self-government bodies;

- to provide for the possibility of delegating powers, both from the bottom up and from top down, exclusively on the basis of agreement and with the corresponding material and financial support for their implementation;
- to develop and ensure the functioning of mechanisms for the financial and economic equalization of territorial communities as well as their development;
- to advance the mechanisms for managing budget funds and control over their spending, ensuring the transparency of the process and accountability to representative bodies.

The formulated tasks can be tackled by adopting new laws or introducing appropriate amendments to the laws currently in force.

Conclusions

Acceleration of the reform of local self-government and territorial organization of power constitutes one of the most topical and urgent challenges which have to be resolved in order to help Ukraine develop as a modern, democratic, competitive and unified state, to ensure its sustainable economic growth. It is important to optimize the administrative-territorial structure and the current model of territorial power distribution (the current one still causes many questions and doubts); introduce local democracy mechanisms and bring them in line with European principles and international standards.

Based on the experience of other West European countries, the issue of implementing economic, social and political reforms in Ukraine should be considered in the light of European integration. Effective implementation of this course requires the following coordinated measures from the authorities at all levels: implementation of major institutional changes; reforming the principles and methods of work, including training, retraining and the professional development of personnel; providing financial and economic opportunities for stimulating the development of local self-government.

The defectiveness of legal instruments and lack of a clear financial mechanism for implementing local self-government reform, the latter is formal, imitative nature, corruption in state authorities and local self-government bodies, no strategic vision of the country's development – all of this delay the modernization of local self-government in Ukraine.

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Основні напрями розвитку місцевого самоврядування в Україні

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Анотація

Метою статті є виявлення актуальних проблем і питань, пов'язаних із формуванням і розвитком місцевого самоврядування в Україні, а також аналіз концепції місцевого самоврядування та визначення її особливостей. У статті використано комплекс наукових методів: термінологічний, системно-структурний, формально-логічний, порівняльно-правовий. Теоретичне підґрунтя дослідження становлять праці українських та іноземних учених, Конституція України та Європейська хартія місцевого самоврядування. Наукова новизна статті полягає в тому, що в ній здійснено комплексне дослідження засад розвитку місцевого самоврядування у контексті його модернізації та інтеграції, з огляду на останні міжнародні тенденції муніципального управління та внутрішніх соціальних перетворень. Запропоновано рішення для розбудови оперативного й ефективного місцевого самоврядування в Україні. За результатами здійсненого дослідження сформульовано такі висновки: з огляду на досвід інших західноєвропейських країн, питання здійснення економічних, соціальних і політичних реформ в Україні слід розглядати в аспекті європейської інтеграції; для ефективного впровадження цього курсу необхідні такі скоординовані заходи влади на всіх рівнях: здійснення основних інституційних змін; реформування принципів і методів роботи, а також підготовка, перепідготовка та підвищення кваліфікації персоналу; надання фінансово-економічних можливостей для стимулювання розвитку місцевого самоврядування; дефектність правових інструментів і брак чіткого фінансового механізму реалізації реформи місцевого самоврядування (остання має формальний, імітаційний характер), корупція в органах державної влади та місцевого самоврядування, несформованість стратегічного бачення розвитку країни – це фактори, що стримують модернізацію місцевого самоврядування в Україні

Ключові слова:

місцеве самоврядування; децентралізація; автономія; територіальні громади; демократія; компетенція