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ACTIVITY FORMS OF MUNICIPAL AUTHORITIES AND PROSPECTS FOR ITS DEVELOPMENT IN UKRAINE

The authors attempt to explore the nature of local public authority, its sources of legitimacy, its types and forms. An idea of the constitutional and legal bases of the organization and activity of local public authorities and its bodies is given there. The existing systems of local self-government in different states are analyzed; attention is focused on the difference between the concepts of “self-government” and “management”. The problems of administrative reform in Ukraine in the context of globalization are analyzed there.

Keywords: public power; types and forms of public power; management; local self-government; systems of local self-government; administrative reform; decentralization.

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Форми діяльності муніципальних органів влади та перспективи їх розвитку в Україні

Метою статті є вивчення теоретичних і практичних аспектів організації та діяльності органів місцевої публічної влади, спроба дослідити природу місцевої публічної влади, джерела її легітимності, види та форми публічної влади. Дано уявлення про конституційно-правові основи організації та діяльності місцевої публічної влади і їх органів. Повноцінною у структурній побудові модель реформи адміністративного (державного) управління в Україні була сформована урядом ще у 1989 р., але не відбулась через політичну безвідповідальність. Утрачений час негативно позначився на всіх сферах життя суспільства, а його європейський вибір був досягнутий героїчними діями українського народу. З'явилися нові цілі, цінності і пріоритети, а це означає необхідність прийняття нової концепції реформи державного управління, в якій є компаративістські та міжнародні аспекти. Комплексно проаналізовано усю сукупність проблем, пов'язаних з формуванням та функціонуванням системи місцевої публічної влади в Україні у контексті Концепції адміністративної реформи в умовах глобалізації. Проаналізовано існуючі системи (моделі) місцевого самоврядування в різних державах, зокрема англосаксонська, романо-германська (континентальна, французька) та іберійська системи місцевого самоврядування; акцентовано увагу на відмінності понять «самоврядування» і «управління». Проаналізовано не лише стан теоретичної розробки системи місцевої публічної влади, а й стан та дієвість її механізмів, які вимагають правового врегулювання, шляхи їх удосконалення, приведення цих механізмів у відповідність з поточними та стратегічними завданнями державотворення, формування надійних і стабільних механізмів України як демократичної держави. Охарактеризовано три етапи адміністративного реформування в Україні. Перший етап – це створення та укрупнення громад навколо вже існуючих центрів економічної активності. Другий етап характеризується оптимізацією адміністративно-територіального устрою областей, в ході якого було на меті ліквідувати районні державні адміністрації, а їх функції передати виконавчим комітетам районних рад. На третьому етапі реформи передбачалася оптимізація функцій і меж областей, основна мета якої – підвищення доступності влади і здешевлення адміністративних послуг. На жаль, ці плани досі повною мірою не реалізовані і замість адміністративної реформи проводилась лише її імітація. Для радикального вирішення усіх цих системних проблем доведено необхідність серйозних зусиль законодавців. Зокрема, потрібно повернути в Конституцію положення про право обласних і районних рад створювати свої виконавчі комітети; прийняти закон про делеговані повноваження і територіальний устрій; необхідні нові редакції законів про місцеве самоврядування і державні адміністрації. У процесі дослідження використовувались загальнонаукові та спеціальні методи, які є засобами наукового дослідження. Зокрема, історико-правовий метод дав можливість розкрити значення понять «місцевий бюджет», «місцеве самоврядування», «державне управління», висвітлити розвиток наукових поглядів на конкретні питання. Метод системного аналізу застосовувався для комплексного узагальнення особливостей існуючих систем місцевого самоврядування кожної країни, що розглядається. Аналіз законодавства та юридичної літератури дозволяє зробити висновки, що характер змісту і спрямованості конституційного реформування політичних і правових інститутів, механізму розмежування публічних владних повноважень та взаємодії між інститутами державної влади і місцевого самоврядування діє з метою піднесення ефективності управління, оптимального збалансування інтересів центру і регіонів та прискорення темпів суспільного соціально-економічного розвитку, досягнення високих стандартів якості життя. Розвиток інститутів місцевої публічної влади має свій сенс не лише у забезпеченні поділу влади, що виражає горизонтальний ефект організації публічної влади, а й у забезпеченні ініціативності, організаційній та ресурсній самостійності місцевого рівня влади.

Ключові слова: публічна влада; види та форми публічної влади; управління; місцеве самоврядування; системи місцевого самоврядування; адміністративна реформа; децентралізація.

Problem statement. Modern legal science has a keen interest in the study of the state and various forms of local government. The object of research of legal scholars is the relations arising in the process of organizing and operating self-government in urban, rural and other territories, as well as the system, principles and functions of local self-government. The study of these issues is of great theoretical and practical importance from the point of view of the independence and autonomy of local self-government bodies. The unprecedented acceleration and complication of processes in all spheres of society has led to the restructuring of many institutional structures of modern civilization. There are a number of signs that are usually considered by scholars as evidence of the decline of a sovereign state, in particular: activation of regions within state formations, which takes forms from the desire to conduct independent economic activity to separatist sentiments with calls for greater autonomy or withdrawal from the state; formation of a new human identity that goes beyond the national-state community, attraction to the global structures of civil society. In this regard, the problem of administrative (public) administration reform, which was formed by the Government in 1989 and is still going on in Ukraine, is becoming relevant.

Recent research and publications analysis. The theoretical foundations of the topic under consideration, first of all, were laid by researchers who studied the state, its forms and institutions, such as: T. Hobbes, J. Locke [1], C. Montesquieu [2], J. Rousseau, A. Berson, G. Bloomer, A. Aron, M. Weber [3] and others. Some aspects of the researched problem were reflected to varying degrees in the works of V. Averyanov [4], O. Batanov [5], V. Pogorilko, O. Fritsky, Yu. Shemshuchenko [6]. Using the comparative legal method, G. Barabashev [7] also deeply analyzed the basic postulates of local self-government, considering it the most important element of the state. All of the above indicates the relevance of the proposed article.

The purpose and objective of the article is to study the constitutional and legal foundations of the organization and activities of lower level local authorities in different countries, as well as to characterize the stages of the administrative reform in Ukraine.

Presentation of the main material. Considering the constitutional and legal foundations of the organization and activities of higher and middle level state bodies, it should be noted that public power is organized and exercised not only at the national and regional levels, but also at the local level.

Accordingly, the organization and activities of local authorities are regulated not only by constitutional law, that determines only the most general and fundamental constitutional foundations for the construction and functioning of this power, but also other, more specific issues in this area, such as administrative, municipal and a number of other areas of law. If we characterize self-government and management, then the management of local affairs can be carried out both on the basis of administrative-territorial units' population initiative, and by solving these cases by officials of the state apparatus appointed from above in the localities. At the same

time, local self-government is the public power organ of an administrative-territorial unit population, based on its self-organization and initiative, with greater or less administrative independence and it is not part of the state power system. In this regard, the state and its bodies have no right to interfere in the activities of local self-government, which is carried out within the limits of its competency. Within the framework of a democratic system of government, it is usually recognized that it is better and more efficient to solve local problems not from the center with the help of state representatives, but at the local level by activating the initiative of the local population and non-state bodies elected by them.

Thus, local self-government is one of the links of the modern democratic system of government, the expression of the power of the people in a modern form and at the appropriate level, which ensures the impossibility, on the basis of the law, to resolve independently many issues of local importance in the interests of the territorial community. The European Charter of Local Self-Government, adopted by the Council of Europe on October 15, 1985, requires local self-government to be enshrined in legislation or even in the constitution of each country. The Charter notes that local self-government means the right and the effective ability of local authorities to regulate and govern within the framework of the law, under their own responsibility and in the interests of the population, a significant part of public affairs [8].

In contrast, local government is the administration of local affairs by state bodies and its local representatives. Under public administration, local government bodies act as territorial or sectoral structural units of local government bodies, central ministries and departments. It is characterized by the appointment by central or other higher state bodies of state administration bodies to lower territorial units, through which they are managed. In France, for example, this is the prefect of the Republic in the region, the prefect in the department, the sub-prefect in the district. The Constitution of the country (Article 72) establishes that representatives of the Government in departments and territories are responsible for national interests, administrative control and observance of laws and local collectives (communes, departments, overseas territories) freely govern by elected councils under the conditions provided by law [9, p. 427]. This is an example of the principles of local governance and self-government combining in this country, and in most democratic countries of our time.

Although there are different ideas about the nature of local self-government and government and its relationship in different countries, in general, however, it can be recognized that it should not be broken and especially opposed under a democratic system of government. Local government and local self-government are qualitatively different forms of manifestation of a government unified system, that don't only not exclude, but also combine and complement each other. Experience shows that it is advisable to solve some issues of local life through their non-state self-government, and others through public administration, relying on central or other higher authorities. The well-known autonomy of local self-government and

its bodies, which is also established by the state law, does not mean their isolation from public administration, refusal to interact with it, especially since the state can transfer the implementation of some its bodies functions to local self-government bodies.

Issues of local self-government and administration find unequal reflection in the constitutions of various countries: in some ones, nothing is said about this at all, legal regulation is carried out only by special legislation; in others, the foundations of local self-government and administration are consolidated briefly and in the most general form; in the third (especially the newest) – this is discussed widely and in detail with the allocation of special chapters, sections, etc.

So, in the Constitution of Portugal, the whole section is devoted to the local government organization, including five chapters and about 30 articles. It says that local self-governing units are part of the democratic states organization, are “territorial legal entities with representative bodies that are aimed at protecting the interests of the local population” [10].

In Armenia, the administrative-territorial units, which are regions and communities, according to the Constitution, local self-government is carried out in communities (rural and urban), and state administration in regions [10].

In Kyrgyzstan, issues of local importance to the life of the population of auls, townships, cities, districts, regions are resolved on the basis of local self-government, acting along with state power.

The Constitution of Ukraine established that territorial structures are based on the principles of the unity and integrity of the state territory, a combination of centralization and decentralization in the exercise of state power, and a balanced socio-economic development of regions. The primary level of the administrative-territorial structure and, accordingly, the system of state authorities and local self-government are villages, townships, cities, districts in cities. Districts and cities with district subordination are the middle level. The upper level is the Autonomous Republic of Crimea (currently is annexed by Russia), regions, the cities of Kiev and Sevastopol.

The administrative-territorial structure also plays an important role in the organization and activities of local self-government bodies [11, p. 14–16]. However, the dual system of local self-government, enshrined in the Constitution of Ukraine, indicates that the state approaches differently this institution in different administrative-territorial units [12]. All countries use different systems (models) of local self-government. Several systems are usually distinguished.

The Anglo-Saxon system (Great Britain, USA, Canada, Australia, etc.) is characterized by the residents' election of the corresponding administrative-territorial units of the council (board) and a number of officials to resolve local affairs and the absence of representatives of the central government in the field, who control the activities of local elected bodies. Under such a system, mayors of cities are usually elected either directly by the population or by the indicated councils, numbering several dozen representatives in large cities.

The Romano-Germanic (continental, French) system of local self-government (France, Italy, Poland, Bulgaria, Turkey, etc.) combines the features of elective local self-government and appointed local government. Most often, we are talking about the fact that in the lower levels (communities, communes, etc.) only elective councils and elected mayors operate, and in the higher levels of the administrative-territorial system either both elected bodies of local self-government operate or it is an official of the state administration, appointed from center, or only the indicated official. The appointed representative of the president, government or the Ministry of Internal Affairs exercises state power in the localities and at the same time controls the legality of the adopted acts of the local self-government body.

The Iberian system (Brazil, Argentina, Mexico, Portugal, Colombia, Nicaragua, etc., partly modern Spain) is characterized by a peculiar intertwining of elements of public administration and local self-government, within the framework of which one can speak of a certain combination of both and the predominance of the role of the former.

If we talk about the functions and competences of local self-government, they are quite the same type, which is reflected in the European Charter of Local Self-Government. The scope of these bodies usually includes: ensuring the implementation of state and local legislation in a given territory; municipal property; local finance and local budget; local taxes and fees; Department of Housing and Utilities; construction and land management; trade; catering; protection of public order; healthcare; education; social service; household service; fire safety; sanitary control; nature conservation, etc. Very often, local self-government bodies perform a number of functions and powers that the state legally delegates to them.

Functions and powers are regulated differently in countries with different legal systems and systems of local self-government and government. In other countries, the constitutions may speak about this very succinctly or even be completely silent, but it can be said in sufficient detail in a special law on local government and (or) self-government and other special legislation or legal act. On the basis of legislation, many problems in this area are regulated in detail in the charters (statutes) of communities and regions. In the countries of the Anglo-Saxon system of law, an important role in this area is played by judicial precedents that complement and specify the legislation on the competence of local government bodies in many ways. These countries usually provide a clear and detailed listing of the rights and responsibilities of local authorities. Within the continental system, the competence of these bodies is determined according to the main principle, and the scope and content of their powers are established by indicating that they are called upon to deal with all local affairs that are not legally represented by other government bodies, that are by indicating what local authorities cannot and should not do.

At the same time, the state controls the activities of local self-government bodies. This is carried out both by central state bodies and by its local representatives (prefects, commissioners, governors, etc.) [13]. They use various forms of such

control, up to the abolition of local self-government bodies' acts, the removal of the mayor, and in a number of countries, under certain conditions, the dissolution of the municipal council. In connection with subsidies from the center to local self-government bodies, the state retains great opportunities for financial control over the activities of these bodies, not to mention the impact on them through the judiciary [4, p. 150].

With regard to the problems of administrative reform in Ukraine in the context of globalization, it should be noted that despite the differences in approaches and assessments, the views of different scholars agree that state sovereignty at the present stage of historical development undergoes significant transformation. As a result, the state will partially lose its prerogatives in future, delegating it to one degree or another to supranational government structures and local institutions of civil society. The unprecedented acceleration and complication of processes in all spheres of society has led to the restructuring of many institutional structures of modern civilization. There are a number of features that are usually considered by scholars as evidence of a sovereign state decline, in particular: activation of regions within state formations, which takes the form of the desire to conduct independent economic activity to separatist sentiments with calls for greater autonomy or secession; formation of a new human identity that goes beyond the national-state community, attraction to the global structures of civil society.

In this regard, the problem of administrative reform is becoming relevant in Ukraine. The full-fledged model of administrative (public) government reform in Ukraine was formed by the Government in 1989, but did not take place due to political irresponsibility. The lost time had a negative effect on all spheres of society, and its European choice was achieved by the heroic actions of the Ukrainian people. New goals, values and priorities have emerged, which means the need to adopt a new concept of public administration reform, in which there are comparative and international aspects.

If a person does not participate in the management of his own house, street, village and city, then he is not a citizen, but a lawless and speechless object of government. Without full-fledged citizens, there is no civil society, and without civil society, a democratic state is impossible. Based on this extremely cruel premise, we consider the most important task of Ukraine today to create a system of local self-government and civil society.

With regard to the problems of administrative reform in Ukraine, it should be noted that the purpose of the Concept of Administrative Reform is decentralization of power and approval of the principle of subsidiarity, which states that each specific function of the state should be transferred to the closest to people level of government, where all key functions (education, health, housing and communal services) would be concentrated in territorial communities, and only those problems that the local authorities are unable to deal with on their own were passed on (for example, issues of defense and security, development of science, construction of highways, etc) [10, p. 87–91].

This Concept of local self-government and territorial organization of power reforming in Ukraine defines the main objectives of state administrative-territorial structure reforming in the context of executive power decentralization, namely: 1) new system of state administrative-territorial organization formation; 2) separation of powers (optimal distribution) between local governments and executive authorities at different levels of administrative-territorial organization; 3) formation of criteria for administrative territorial units of different levels of the state administrative-territorial structure.

Thus, the reform consists of three stages. The first stage is the consolidation of communities. The creation of new communities is envisaged around the already existing centers of economic activity, such as large villages, towns and cities, taking into account social needs, population, infrastructure development and the availability of education, health care and utilities. Due to the budget reform, the new enlarged communities have to become economically independent and receive a non-subsidized budget. Thus, it is planned to transfer most of the functions of district administrations to the community level.

The second stage is characterized by the optimization of the administrative-territorial structure of the regions. Enlarged communities should be consolidated into powerful areas with a population of 70 to 200 thousand people. The district government should provide people with more complex types of administrative services that are specialized medical care, secondary special education, law enforcement protection and justice administration. During this stage of the administrative reform, the aim is to eliminate district administrations and transfer their functions to the executive committees of district councils.

On April 20, 2020, the Verkhovna Rada of Ukraine adopted in the second reading a bill amending the Law of Ukraine “On Local Self-Government in Ukraine” and some other legislative acts of Ukraine on decentralization and delimitation of local government power [14]. This document gave the Cabinet of Ministers of Ukraine at the legislative level the right to decide on the definition of administrative centers and territories of territorial communities, as well as to submit to the Verkhovna Rada of Ukraine draft legislation acts on the formation and liquidation of districts. As a result, on November 17, 2020, the Verkhovna Rada of Ukraine adopted the Resolution “On the formation and liquidation of districts” [15], according to which in Ukraine 136 new districts were formed (out of 460). In particular, six districts have been formed in Transcarpathia region, namely: Berehiv, Mukachevo, Rakhiv, Tyachiv, Uzhhorod and Khust districts.

The third stage of the reform provides the optimization of the functions and boundaries of the regions. The main goal is to increase the availability of power and reduce the cost of administrative services. And this, in turn, would create the conditions for all necessary social reforms and accelerated economic modernization of the country. Unfortunately, these plans have not yet been fully implemented.

In practice, state power and local self-government are not separated, and the state does its best not to release local self-government from its subordination.

District and region councils do not have their own executive committees, so that are they seem to have the power, resources and powers, but they cannot implement them. They are forced to delegate all functions to state administrations, to officials that are appointed from above and often sent from afar who are not responsible for the exercise of delegated powers to councils or citizens.

The right to self-government in Ukraine is more or less realized only at the level of created territorial communities. But there are some limitations. First, not everyone has a revenue base for forming full-fledged budgets. Secondly, they cannot independently manage their own resources; these funds are spent through the State Treasury, which is not accountable to local councils. Third, local governments are forced to coordinate all serious decisions with public services, such as the sale of land or construction of buildings [6, p. 4–7].

Conclusions and suggestions. Based on the above, we can conclude that the higher the level of development of democracy in the country, the wider and more actively real local self-government is used in one form or another and the rejection of it is one of the important manifestations of undemocratic or insufficient democracy of the socio-political state system. An analysis of the problems of the relationship between local self-government and society allows us to conclude that after a long break, the state is trying to return to a civilized system of social management, including public administration and local self-government, managing as a territorial-administrative structural part in the civil society system. The development of local public authorities institution has its meaning not only in ensuring the separation of powers, which expresses the horizontal effect of the public power organization, but also in ensuring of the initiative, organizational and resource independence of the local government. It is qualitative expression of power division on the criterion of accessibility of management services and ensuring organizational and resource independence of local self-government depending on the scale and tasks of territorial communities.

Ukraine has all the prerequisites for the transition to sustainable development of settlements – the legal framework, research potential and demand from the population.

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Формы деятельности муниципальных органов власти и перспективы их развития в Украине

В данной статье предпринята попытка исследовать природу местной публичной власти, источники ее легитимности, виды и формы публичной власти. Даны представления о конституционно-правовой основе организации и деятельности местной публичной власти и ее органов. Проанализированы существующие системы местного самоуправления в различных государствах, акцентировано внимание на различие понятий «самоуправление» и «управление». Проанализированы проблемы проведения административной реформы в Украине в условиях глобализации.

Ключевые слова: публичная власть; виды и формы публичной власти; управления; местное самоуправление; системы местного самоуправления; административная реформа; децентрализация.

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