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ОСОБЛИВОСТІ ДІЯЛЬНОСТІ ОРГАНІВ МІСЦЕВОГО САМОВРЯДУВАННЯ В УКРАЇНІ

Анотація. Порушено питання правового статусу органів місцевого самоврядування в Україні. Розкрито особливості організації та функціонування місцевого самоврядування. Розглянуто правові основи діяльності органів місцевого самоврядування, систему принципів, серед яких акцентовано на принципах поєднання місцевих і державних інтересів; державної підтримки та гарантій місцевого самоврядування; підзвітності та відповідальності.

Місцеве самоврядування в Україні – це гарантоване державою право та реальна здатність територіальної громади – жителів села чи добровільного об'єднання в сільську громаду жителів кількох сіл, селища, міста – самостійно або під відповідальність органів і посадових осіб місцевого самоврядування вирішувати питання місцевого значення в межах Конституції України і законів України. Місцеве самоврядування здійснюється територіальною громадою в порядку, встановленому законом і безпосередньо, і через органи місцевого самоврядування: сільські, селищні, міські ради та їх виконавчі органи.

Конституція гарантує громадянам України право обирати та бути обраними до органів місцевого самоврядування, право брати участь у місцевих референдумах, право рівного доступу до служби в органах місцевого самоврядування, право направляти індивідуальні чи колективні письмові звернення або особисто звертатися до органів і посадових осіб місцевого самоврядування.

Ключові поняття: органи місцевого самоврядування, правовий статус, територіальна громада, принципи, народовладдя.

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PECULIARITIES OF THE LOCAL AUTHORITIES ACTIVITY IN UKRAINE

Abstract. The issues of the legal status of local self-government authorities in Ukraine are addressed in the article. The peculiarities of organization and functioning of local self-government are considered. Great attention is paid to the legal bases of the activity of local self-government authorities; a system of principles among which the principles of the combination of local and state interests is singled out; state support and guarantees of local self-government; accountability and responsibility.

Local self-government in Ukraine is the right guaranteed by the state and the real ability of a territorial community - residents of a village or a voluntary association of villagers, villages, towns, independently or under the responsibility of bodies and officials of local self-government, to resolve issues of local significance within the constitution Ukraine and the laws of Ukraine.

The Constitution guarantees citizens of Ukraine the right to elect and be elected to local self-government authorities, the right to participate in local referendums, the right to equal access to the service in local self-government bodies, the right to send individual or collective written appeals or to personally address bodies and officials of local self-government.

Key concepts: local self-government authorities, legal status, territorial community, principles, democracy.

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Introduction

Ensuring proper organization of state administration and local self-government is a fundamental condition for the functioning of democratic countries. Implementation of the reform in this direction includes both the transformation of higher, central and local executive authorities and local self-government bodies. At this stage of sovereign Ukraine state-forming, efforts to find the best combination of state and local interests through the creation of an effective mechanism for interaction between local executive authorities and local self-government bodies are not discontinued.

Researches on the activity of local self-governments are presented in publications of leading scholars, including I. Butko, M. Gavryltsiv, V. Golovchenko, P. Gural, V. Kampo, V. Kise-lychnyk, O. Korpan, M. Krasnov, V. Kuibida, G. Lukyanova, V. Chyrkyn and others.

The purpose of the article is to highlight the issues of the activities of local self-government authorities in Ukraine.

1. Leading institute of democratic constitutional system

Reflecting the desire of the Ukrainian people to develop and strengthen a democratic, social and legal state, the Constitution of Ukraine in Article 7 consolidated the principle that «local self-government is recognized and guaranteed in Ukraine» [1]. Consequently, the Constitution of Ukraine places on the state the function of supporting local self-government as one of the foundations of a democratic system. The provisions of the Basic Law set local self-government at the level of one of the leading institutes of a democratic constitutional system.

Among the laws that contain the rules governing the questions of organization and functioning of local self-government, the Law of Ukraine «On Local Self-Government in Ukraine» [2], which is a «basic» law on these issues, occupies a special place. It was on the basis of this Law that laws that regulate certain issues of the functioning of local self-government, for example:

«On Elections of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils and Village, Town, City Mayors», «On Service in Local Self-Government Authorities» were developed and adopted.

The structural level of «local authorities» in the system of executive power is represented mainly by the local authorities of general competence – regional and district state administrations [3, p. 42].

Local self-government is carried out by the territorial communities of villages, settlements, towns both directly and through rural, settlement, town councils and their executive bodies, as well as through district and regional councils representing the common interests of territorial communities of villages, settlements, towns.

According to Article 4 of the Law of Ukraine «On Local Self-Government in Ukraine»: «Local self-government in Ukraine is carried out on the principles of: democracy; legality; publicity; collegiality; a combination of local and state interests; elections; legal, organizational and financial independence within the limits of the powers determined by this and other laws; accountability and responsibility to territorial communities of their bodies and officials; state support and guarantees of local self-government; judicial protection of the rights of local self-government» [2].

The analysis of these provisions of the Constitution of Ukraine and the Law of Ukraine «On Local Self-Government in Ukraine» makes it possible to draw the following conclusions:

1. The Constitution of Ukraine recognizes the right to independently resolve issues of local importance only by the primary territorial communities – residents of «natural» administrative-territorial units, settlements (villages, several villages, settlements and towns).

This approach to defining the subjects of law for local self-government has deep historical roots. It was in the settlements that people were naturally grouped together for a common life, the problems of which they discussed on the stairs, general meetings, and to select the appropriate persons (bodies) – leaders, elders, councils for the current management. Thus, a community was formed, the distinctive feature of which is the availability of elected bodies, and such a system was called a public, communal, local or municipal self-government.

2. The Constitution and the Law provide that the right of a territorial community to local self-government is exercised by the community as a direct result of direct forms of democracy (local elections, general meetings, etc.), and through the activities of elective and other bodies of local self-government.

The right of a territorial community to local self-government is ensured by the right of every citizen of Ukraine to take part in local self-government. According to Art. 3 of the Law «On Local Self-Government in Ukraine» citizens of Ukraine exercise their right to participate in local self-government due to belonging to the respective territorial communities. In this regard, any restrictions on this right, depending on the race of citizens, color of the skin, political, religious and other beliefs, gender, ethnic and social origin, property status, the period of residence on the territory concerned, are prohibited by language or other grounds.

2. The ratio between the concepts of «local self-government» and «local government»

The identification of the ratio between the concepts of «local government» and «local self-government» is of great theoretical and practical significance. Different, sometimes diametrically opposed views are expressed on this issue in the literature. Most scholars oppose local government and local self-government. If local self-government is understood as the activity of a territorial community and its elected bodies for managing its affairs, then the local government is considered as administrative activity in the administrative-territorial unit, which is carried out through an administration appointed by the central or other higher state authorities, that is, direct state administration on the settled territory.

At the same time, there is an opinion on the inappropriateness of opposing these two concepts. Local government is proposed to be considered as a complex mechanism, which may include both local state administration and local self-government bodies, while serving as an integral part of the state mechanism.

The first approach, in our opinion, reflects the nature of local self-government more accurately and allows a clear delimitation of the self-governing functions and powers of territorial communities with the functions and powers of state power, which are implemented at the regional and local levels by executive authorities or by local government bodies on the instructions of the state. In the latter case, local self-government authorities are controlled by the relevant executive authorities, but this does not mean a change in their nature and cannot be considered a basis for inclusion in the state mechanism. As generic, that is, covering the notion of local government and local self-government, the term «management on the ground» could be used, meaning the possibility of such a management with the use of various forms of local self-government or direct state management in the region (local government) [4, p. 46].

The system of local self-government found its legal regulation in Article 4 of the Law. However, not all of them equally reflect those qualitative characteristics, due to which it is fundamentally different, for example, from public administration and other socio-political phenomena. In this regard, the basic principles of local self-government should be conventionally divided into two groups:

- those that are universal, that are inherent in both local self-government and its bodies, as well as state administration and its bodies, and other bodies of state power;

- those that are specific to local self-government and its authorities.

3. The basic principles of local self-government

The legal autonomy of local self-government authorities and their bodies is based on the fact that they must have their own powers as defined by the Constitution or the Law. Local self-government bodies, referred to in part one of Article 16 of the Law, are legal entities and are endowed with this and other laws by their own authorities, within which they act independently and bear responsibility for their activities in accordance with the Law.

The subject of local self-government, as it follows from its definition in the Constitution and Laws of Ukraine, is the issues that arise from the collective needs of a territorial community, that is, the population itself, residents who live in the territory of the respective village, settlement, town or several rural settlements, that have a single administrative center (village council). However, the state can provide local governments with separate powers of the state executive power, which they (local governments) must implement «in a part-time». That is why their authority by nature is divided into two groups: privy or self-governing and delegated or entrusted. If, in the exercise of their powers, local self-government bodies act independently and subject only to the law, then when exercising the delegated authority they carry out their activity under the control of the relevant bodies of state executive power (ch. 3, 4, Article 143 of the Constitution of Ukraine) [1].

Another, not less important principle of local self-government is the principle of the combination of local and state interests. It seems to us that it does not mean that local self-government cannot be totally independent of the state (sovereign) management system, that is, a kind of state in the state. Being an effective form of decentralized powers of state power to be exercised by non-state actors (territorial communities, local authorities and officials of local self-government), it must

harmoniously combine in its activities local and state interests, in particular, to effectively and responsibly exercise separate powers of executive power authorities, provided (delegated) to him by the Law (Part 3, Article 143 of the Constitution of Ukraine) [1].

The principle of state support and guarantees of local self-government, as well as the principle of the combination of local and state interests, also follows from the essence of local self-government described above [5, p. 392]. The classic principle is the well-known triad-self-organization, self-financing, self-responsibility. Nevertheless, nowhere in the world, local self-government can do without the proper support of the state, in particular financial. That is why the Basic Law of Ukraine states: «The state participates in the formation of revenues of local self-government budgets, financially supports local self-government» (Part 3, Article 142 of the Constitution of Ukraine) [1].

The trust of society to the state power is based on the moral consensus of citizens, their willingness to subordinate their interests to the general, which leads to a well-founded transition to fundamentally new models of relations in the country, to another model of democracy [6, p. 175]. The state should support local self-government politically as well, creating not only financial and economic, but also constitutional, organizational and legal and financial guarantees for its effective functioning.

With regard to the last two principles (accountability and responsibility to territorial communities of their bodies and officials, judicial protection of the rights of local self-government) [5, p. 392], they are also the essential principles of the organization and activities of local self-government and its bodies. It is known that these principles cannot be applied in the system of bodies of state executive power, built on the principle of strict subordination. The same fact that, in accordance with the Constitution of Ukraine, local state administrations are accountable to and supervised by the councils in terms of the powers delegated to them by the relevant district and regional councils are equal, and the institution of delegating self-government powers to state bodies is an exception to this rule, the problem that, as this has already been noted in the previous chapters of this publication, requires a thorough scientific and critical evaluation.

The question of the principles of local self-government is not limited to the ones envisaged by Article 4 of the Law, and therefore needs today its expansion. For example, attention should be drawn to a principle (provided by the law) of accountability and responsibility of bodies and

officials of local self-government to territorial communities and their responsibility to the state is not provided for. However, the Law states that bodies and officials of local self-government are liable in case of violation of their Constitution or laws of Ukraine that their powers may be terminated ahead of schedule in the order and within the limits specified by this Law [2].

Other principles of local self-government, which require their legislative regulation, are the so-called principles of subsidiary and universality. They are the principles of the European Charter of Local Self-Government, and therefore, the European standard, to which the practice of municipal construction of our state should be sought.

In accordance with the principle of ubiquity, local self-government should be carried out throughout Ukraine, that means the absence of territories that are not subject to the jurisdiction of territorial communities and relevant local authorities. Except for the cases when the peculiarities of the implementation of local self-government in separate areas can be provided by separate laws, as it is done in relation to the cities of Kyiv and Sevastopol.

In the special literature on the problems of local self-government, other principles

are distinguished, in particular, such as the combination of a centralized legislative regulation with the local rule-making of the local communities themselves and the relevant local governments on the legal basis of local self-government; the combination of institutes of representative and direct democracy as the main means of implementing self-governing functions; real manageable territory; obligations of decisions of local and regional self-government authorities, adopted in accordance with the law; the interaction of the local government with civil society organizations and movements [3, p. 49].

Conclusions

The Constitution of Ukraine defines local self-government as the right of a territorial community – residents of a village or a voluntary association in a village community of residents of several villages, settlements and towns – to independently settle local issues within the Constitution and Laws of Ukraine. Local self-government is carried out by the territorial community in the manner prescribed by law, both directly and through local self-government bodies: village, settlement, town councils and their executive authorities.

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