



EVOLUTION OF UKRAINIAN LEGAL FRAMEWORK OF THE LOCAL GOVERNMENT

Halyna HIRNYAK,

senior lecturer of Ukrainian academy of printing

Summary

This paper addresses to the problem of the evolution of Ukrainian legal framework of the local government and the recognition and guarantee of it's by the state. Analyses of both the legal and historical literature on the research of the concept of the local self-government. Reveals the reform of a system of the local self-government, an approach of its legislative background to the European standards, because of the Euro-Atlantic aspirations of Ukraine. Justified experience of Ukraine in the development of self-governing institutions, which in most cases were developed under the domination of foreign countries which occupied Ukrainian lands.

Key words: guarantees, government, state, law.

Аннотация

В статье рассматриваются проблемы эволюции правовой основы украинского местного самоуправления и признания и гарантирования их государством. Осуществляется анализ как юридической, так и исторической литературы, по исследованию понятия местного самоуправления. Раскрываются процессы реформирования системы органов местного самоуправления, приближения ее законодательной базы к европейским стандартам, что обусловлено евроатлантическими устремлениями Украины. Обоснованно опыт Украины в развитии самоуправляющихся институтов, который в большинстве случаев приобрелся в условиях господства иностранных государств, которые занимали украинские земли.

Ключевые слова: гарантии, самоуправление, государство, право.

Statement of the problem. At the present stage of development Ukraine has entered a period of profound transformation changes of the economic and socio-political character. The processes of centralization or decentralization of power that actively influence the formation of the political system, put the task in front of the researchers to define the role and place of local government in the structure of political and administrative structure. A question of optimization and improvement of the efficiency of governance at the regional, local, occupies an important place among the priorities of Ukrainian authorities. Comprehensive development of local government is one of the most important features of any democratic state. Ukraine – a country of a steady tradition of the local self-government. Control of Ukrainian regions traditionally based on the use of various historical forms of local government (veche law, Magdeburg rights, Cossack self-government, zemstvo, etc.).

Background of the research is confirmed by the degree of scrutiny no theme – currently there is no fundamental work on the evolution of Ukrainian legal framework of local government.

State study. Scientific analysis of the problems of the evolution of Ukrainian legal framework of the local government carried out many domestic scholars. Among them may be mentioned J. Paneyko, T. Pilat, V. Kravchenko et al.,

which was a fundamental basis for further study of Ukrainian local government.

The purpose and objective of the article – the study of evolution problems of Ukrainian legal framework of the local government, breaking down the administrative-command system of management, restoration and building on democratic principles of Ukrainian statehood objective resulted in the finding of such an organization of power that would meet both national traditions and the modern world democratic tendencies. The new model of power could not be based on political and organizational principles of the «power vertical», the implementation of which actually dismisses a person from participation in public and civic affairs. World and European experience strongly suggests that in a democratic society, the territorial organization of power should be built on the basis of local self-government – the right of local communities and citizens of those they choose, to decide independently under its own responsibility all local issues, within the limits of the constitution and laws the State.

The main material research. For the first time in Ukraine the principle of recognition of the local government at the constitutional level was enshrined in the Constitution still UPR 1918, whose provisions have not been implemented. The local self-governments was interrupted with the

loss of state independence of Ukraine in 1920 and the establishment of a centralized system of government, which provided direct state control at all territorial levels through a single system of government – Verkhovna Rada. Adoption of the Ukrainian SSR of the 12-th convocation of July 16, 1990 Declaration of State Sovereignty of Ukraine had a positive impact on the formation of the Institute of Local Self-Government in Ukraine [3, p. 429]. It was after the adoption of the Declaration and its core was developed during 1990–1996 multiple revisions of a draft of the new Constitution of Ukraine. Constitutional projects developed by the Constitutional Commission of the Verkhovna Rada of the 12-th and 13-th convocation, based on the idea of local government. It has been proposed different constitutional and legal consolidation of the status of local public authorities. However, a section devoted to local government, almost all projects was weak spot. If to look back at the historical past of Ukraine, which shows us that in the second half of XIX century. Dnieper lands, which belonged to the Russian Empire and in Halychyna, in an autonomous province was part of the Austro-Hungarian government was established. At the same time, local governments were virtually the only institutions where the Ukrainian had the opportunity to join the management of local affairs, to



exercise political activity. The system of local government which was established in times of Halychyna in the Austro-Hungarian continued to operate, with minor modifications, and during the interwar twenty years. Organization and the local government is one of those areas of social and political life of any country, directly covering the broadest population. Multinational countries and especially for ethnic minorities become especially important in these organs. They turn to their national life cells, the cells of the struggle for national, cultural and economic interests. Justifiably renowned theorist and expert in government Y. Paneyko claimed: «Self – a school of political life» [7, p. 101]. It is self-governing institutions in a village; city and county councils have become an effective tool that allowed Polish Halychyna under Austrian Rule to develop his political life. It is well understood meaning self-governing institutions and Ukrainian, different means of trying to prevent the benefits of Poles in these organs. This led to what is in the plane of the government faced the interests of the two nations Self – a school of political life Ukrainian and Polish. This trend continued after the restoration of Polish statehood and became a significant factor in the political life of the region throughout the interwar period.

During the XIX century, the idea of local government was completely formed and implemented in Europe. A prolonged confrontation between the two trends in the organization of government – centralization and decentralization was the next aspect. Decentralization sentiments were particularly strong in countries with large multi-ethnic composition of the population, which, because of their size objective could not only effectively managed by the central government. The idea of creating a self-governing institutions found supporters and implemented even in such super centralized states like Prussia or the Russian Empire.

Could not be ignored the process and Austria-Hungary, where in the middle of XIX century among the ruling elite matured understanding of the need to introduce a system of local government. Revolution 1848–1849 greatly accelerated the process. Habsburg monarchy entered

a period of reform almost all aspects of social, economic and political life. Attempts to limit the absolutist methods management led to the creation of the legal framework government. The immediate manifestation of that was so-called «provizorychnyy public law», issued by the Government of 17 March 1849 It contains a number of theoretical positions, which was based on self-government throughout the state. Particular proclaiming that «... the basis of a free state is a free community» [7, p. 135]. In addition, the law provided for the establishment of municipalities elected government, outlining the range of their assigned duties and the community. Under its provisions were to be made the county and district governments [6, s. 227–289]. Thus, the law provided for the possibility of attracting to address local public affairs. In addition, he outlined a three-tiered structure of government – public, county and district.

The law was never implemented. Already in October 1849, his performance was suspended, and its implementation in Halychyna never started. However, the theoretical ideas and principles contained therein, maintained their relevance and formed the basis of a number of self-governing laws passed by both the central government in Vienna and the Halychyna Sejm over the next decade.

Only in the early 60-s of the XIX century central government in Vienna took up the relations in government. Pushed him to the position and boundary of the Sejm. In particular, in April 1861 Galician Sejm instructed the department to prepare Craiova bill on community structure. June 14, 1861 in the Austrian parliament, Prime Minister A. Shmerlinh presented a draft civil law. He said: «The thesis of civil law from 1849 that is the basis of a free state free community unconditionally responsible truth» [7, p. 135]. Soon, March 5, 1862 was issued by public law which outlined the structure of the communities within the empire. He wore loop in nature and based on it the Halychyna Sejm adopted a number of regional laws that regulate fully the local government at all levels in Halychyna.

After the adoption of the Halychyna Sejm 19–22 March 1866 government draft legislation on community landed gentry and county representation, and relevant election units, August 12, 1866

were approved in Vienna. In subsequent years the government was introduced in Halychyna cities. 13 March 1889 to 30 biggest cities of Halychyna was passed a special law and approved by the respective election ordination. The rest of the smaller cities and towns Halychyna government received July 3, 1896 [8, p. 195–232].

Feature of Halychyna was the fact that on its territory there were isolated communities. Such territorial communities encompass one (sometimes two) village. Organization of Self-Governance Act regulated the lives of 12 August 1866 Subject to the provisions of the Act by adopting a collective and supervisory authority was a public board. It consisted of counselors, elected to the post during the elections. Public Council was chosen for 6 years. The number of counselors depends on the population of the village and could range from 12 to 48 persons. At the same time elected their deputies. Executive council was a public officer, which consisted of the elder of two jurors. They were elected for 6 years.

Sound legal basis for local self-government was the Constitution of Ukraine in 1996, which initiated a new stage of development of the institution of local government in Ukraine. The current Constitution of Ukraine in full compliance with the European Charter of Local Self-Government (in Art. 2 which proclaims: «The principle of local self-government shall be recognized in the legislation of the country and, if possible, in the constitution») alongside such fundamental principles as democracy, sovereignty and independence of Ukraine, the rule of law and so on., captures the principle of recognition and guarantee of local self-government (Article 7).

Regulation «in Ukraine is recognized and guaranteed by local government» gives reason to state that his state recognition, first as the subject of constitutional law in its relations with the Ukrainian people, who have the right to exercise their power directly or indirectly, including through local authorities (Article 5 of the Constitution); is internally essential property of the state that is democratic, constitutional. Second, local government is recognized by the state as a subject of international legal communication, because Ukraine is a member of the Council of Europe. Finally, the local



government should be recognized by all other actors of the political system, all participants of political and legal relations.

Local government recognized Ukraine as one of the constitutional order. This position is logically connected with the intention of Ukraine to be a democracy and rule of law (Article 1 of the Constitution), targeted to individual human rights and freedoms. It demonstrates an understanding of the social value of local government that ensures people exercise their power (p. 2 of art. 5), the right of citizens to participate in managing state affairs and many other fundamental rights.

Constitutional recognition of local government complies with international legal requirements, in particular the European Charter of Local Self-Government, ratified by Ukraine July 15, 1997 [4].

Local government – a kind of local government and at the same time as it is the antipode of any external control, as this government. In any area likely to be citizens of management «above», through the representatives of the institutions of public authority, and self-citizens who are in the community. A local government is a self-organization of the local community and the management of its internal affairs.

A prerequisite for social progress is balanced into a ratio of state and local governments. This need stems from the different tasks of the two spheres of governance. The task of governance is to ensure the uniform implementation of laws throughout the state, while the task of local government is to address local issues at the level at which they arise.

Speaking of real recognition of local government, rather than just declaring this principle in the Constitution, it should be noted that the Constitution of Ukraine adopted a fundamentally new approach to solving management issues. The concept of «governance» in the text of the Basic Law is not found. It replaced the term «executive power and local self-government» (p. 118, 119, art. 140 of the Constitution of Ukraine). In fact, performing the functions of state management bodies of the executive power and the territorial communities of villages, towns, cities, were directly established by local authorities (art. 143).

The Constitution of Ukraine clearly delineated two organ systems: state power and local self-government. Yes century.

5 of the Basic Law states: «The people exercise power directly and through bodies of state power and local self-government». P. 2 of art. 19 states: «The state government and local governments and their officials are obliged to act only on the basis and within the limits and in the manner envisaged by the Constitution and laws of Ukraine». This distinction is reflected in other provisions of the principal Act (art. 38, art. 56, p. 71).

On the one hand, local government is separated from the public administration, on the other – it is closely connected with it. It is first expressed in the fact that local authorities may be vested with the laws of Ukraine with certain state powers to transfer necessary to implement them material and financial resources.

In recognition of local government, while Ukraine it ensures that Ukraine is committed to contribute to its development, not to hinder its activities and protect. This is achieved by consolidating its foundations in the Constitution of Ukraine and their specificity in special legislation.

In matters of local government the Constitution of Ukraine is a very basic, yet flexible political and legal document. Defining the conceptual foundations of local self-government in Ukraine, the Constitution leaves unresolved the whole range of important issues, anticipating the need to regulate their separate laws.

It is necessary to compare two rules that contain the definition of «local government». Art. 140 of the Constitution of Ukraine states: «Local government is the right of a territorial community – residents of a village or a voluntary association of rural community residents of several villages, towns, and cities – to solve local issues within the Constitution and laws of Ukraine» [1]. At the same time, Part 1, Art. 3 of the European Charter of Local Self-Government states: "Under the local self-government denotes the right and the real ability of local governments to regulate a significant portion of local affairs and to manage it, acting within the law, under its own responsibility and in the interests of the local population» [2, p. 33–39] (Emphasis added. – GG).

As can be seen from these texts, the important question «real ability» of local government to solve local affairs «under its responsibility and in the interests of local people» does not find a place in the Constitution of Ukraine. Verkhovna Rada

of Ukraine adopted May 21, 1997 the Law of Ukraine «On Local Self-Government in Ukraine» added legal definition of Local Government said – «guaranteed by state law and the actual ability of the territorial community independently or under the responsibility of authorities and local government officials to address issues of local importance» [5, p. 2].

There are other provisions in terms of security of local government it would have provided in the Basic Law. This is particularly true of the absence of a clear constitutional recognition of the right of local self-government on its own, autonomous from the state budget and our taxes. Article 95 of the Constitution, which defines the budgetary system of Ukraine, states: «The budget system of Ukraine is based on the principles of fair and equitable distribution of wealth among citizens and local communities». However, since this provision does not directly follow that budget system up state and local budgets, autonomous from the state. The existence of independent local budgets are stated in art. 143 of the Constitution of Ukraine, the provisions of which are specified in the Law of Ukraine «On Local Self-Government in Ukraine». Providing local governments the right to adequate financial resources based on p. 3. 142: «The state is involved in the formation of revenues of local government financially supports local governments. Costs of local governments that emerged from the decisions of public authorities shall be reimbursed by the state».

Nevertheless, the Constitution of Ukraine has laid a new model of the relationship between the different levels, completely destroyed the legacy of the Soviet system construction principle of budgetary relations following the example of «dolls». This was a significant step in providing material and financial base of local government.

The material and financial, organizational and legal autonomy of local governments are important guarantees of local communities the right to local self-government. Material and financial autonomy of local governments have the right to own, use and disposal of municipal property and own funds sufficient to carry out the functions and powers of local government. Thus, at least some of these



funds should, as stated in the European Charter, come from local taxes and fees, rates are within the law to determine the most local authorities.

And providing real economic independence of local government today faces a number of challenges. In particular, increased workload and responsibilities transferred to local governments in the socio-cultural and residential areas without adequate funding. At the same time acts adopted on the state level and the local authorities are translated without proper material and financial security features to address the issues generated by the overall situation in the country (involuntary resettlement, refugees, and soldiers, discharged).

Today hardly to be fully ensured in proper financial and economic base for local government, similar to that existing in some highly developed countries. However, the necessary foundation for democratic governance lies in the provisions of the Constitution of Ukraine. And it rules solve two problems: on the one hand to ensure the constitutional right to self-government in general and its dynamic development in the future; the other – not restrict the state to conduct the same stage of the crisis for the entire state of social and economic policies.

No less important safeguard local government is its organizational and legal independence. Guarantees of organizational autonomy of the local government are:

– the provisions of the Constitution of Ukraine that local authorities are not included in a single system of public authorities (art. 5), and service in local government serving independent view of the public service (art. 38);

– assignment for the election of local government, elected or appointed officials of local government powers to local government;

– «The Law on Local Self-Government in Ukraine» [5, p. 71] the prohibition of executive authorities and their officials to interfere with the legitimate activities of agencies and local government officials, as well as address issues assigned by the Constitution and laws of Ukraine and the powers of local government officials, except as delegated their councils, and otherwise provided by law;

– «The Law on Local Self-Government in Ukraine» [5, p. 21] the prohibition to

restrict the rights of communities to local government except under martial law or state of emergency [6, p. 296].

Conclusions. Thus, introduced in Halychyna system of public authorities, in spite of its imperfections and discriminatory, nevertheless created the conditions for active participation of the Ukrainian population in public affairs. Self drew the Ukrainian people to participate in political life, has become a significant deterrent assimilation processes. However, there is another aspect of this problem – namely, the Ukrainian-Polish rivalry for influence in the self-governing bodies. Becoming an important factor in Ukrainian-Polish relations in the framework of the Austrian state of the organism, and the government after the collapse of the Austro-Hungarian Empire and the restoration of Polish statehood left the scene of Ukrainian-Polish conflict, gradually gaining form of inter-ethnic conflict.

Important guarantee of local government is established by the Law of the specified binding regulations and legal requirements of the authorities and local government officials taken within their powers to perform all located on the territory concerned executive authorities, public associations, enterprises, institutions and organizations, officials and citizens. Legal guarantees local governments also have the right to judicial protection of local government, and the responsibility of local government officials to local communities, accountability of local administrations district and regional councils.

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