

V. Kravchenko

**ORGANIZATIONAL AND LEGAL MECHANISMS OF FUNCTIONING  
OF LOCAL GOVERNMENT OF UKRAINE WITHIN THE CONTEXT  
OF THE EXPERIENCE OF EUROPEAN UNION COUNTRIES**

*The proposed paper aims to show organizational and legal mechanisms of functioning of local government of Ukraine. The problems in the field of local government which keep a check on the transformation of Ukrainian local government into authoritative, autonomous institution, able to decide urgent issues of local life in democratic state, taking into account all European traditions, are analyzed.*

**Keywords:** *local government, European Union, European Charter.*

The need in defining the most reasonable ways of state organization development, and in solving the problem of increasing the efficiency of the executive power, organs especially of the local ones, has grown sharply under conditions of Ukraine independence. On the same plane the study and generalization of the practical work experience of local self-governing institution in Ukraine during the 90-ies of the XX century, when this process was factually in the making, acquire the great importance. The timely generalization and scientific realization of the comprehensive practice of local self-governing institutions will allow to some extent mistakes and errors of Ukrainian self-governing institutions structure organization and then activities, hence to approach their functioning to European standard.

Local government is local self-governing authorities, right and real opportunity to regulate the considerable part of governmental affairs and to manage them acting according to the law, in the interests of local population. Local self-governing is the juridical person of the state law, which is ruled by the elective body, empowered on a certain territory.

The European Charter of local government adopted by the European Council in 1985 serves as a basis of organization and activities of local government in modern Europe. This document determined the general development principles of local Government as a main factor, characterizing any democratic formation.

Implementation of these principles provides effective governing which is at the same time close to the citizens [1].

Local government in Ukraine began to renovate only in the 90ies of the XX century. The adoption of the Constitution in 1996 was of great importance for the process of local self-governing development. This Constitution for the first time in the history of the home constitutional law assigned the status and guarantees of local self-governing bodies, activities. Thus article 7 in section General Statute says that "local self-governing is recognized and guaranteed" [2].

This evidently positive fact was given concrete expression in Articles 140, 146 XI of the separate special section "Local Self-Governing". As mentioned in article 140 in particular, "local government is the right of local community citizens of a village, town or city to solve questions of local importance independently within the limits of Constitution and the laws of Ukraine..." Local government is carried out by the territorial community according to the law. It can be carried out directly or through the local self-governing bodies: village, town, city councils and their executive bodies. City self-governing bodies, presenting common interests of territorial communities, villages, towns and cities, are district and regional Councils. The controlling organization matters of districts in cities belong to the competence of city councils. Village, town and city councils can allow organizing house, street, block and other bodies of population self-organizing of citizens, initiative empower them with a part of own competence, finance, property" (article 140) [3].

Thus Ukrainian Constitution has clearly defined the system of local self-governing bodies to which village; town, city, district and regional councils are referred. But, this article of Ukrainian Constitution has still preserved certain touch and traditions of Soviet times. Owing to this it does not fully coincide with the principles and standards, generally acknowledged by democratic Europe, which define local government as non-state or autonomous citizens' self-governing institution.

This disparity and unconformity can be easily traced if we compare the norms of part I of article 140 of Ukrainian Constitution and part I of article 3 of the European Charter about local government. In the latter it is pointed out that government is understood as local self-governing authorities' right and real opportunity to regulate the considerable part of local affairs and rule them, acting according to the law, on their own responsibility and in the interests of local population [4]. As it is seen from the texts of both documents (Constitution and Charter), such an important point that gives local government in the country "real opportunity" to solve local affairs "on their own responsibility and in the interests of local population" is missing from the Basic Law of Ukraine. Thus, the standard of international right, the right of local government to its autonomous of state budget and its taxes takings, has factually remained unsealed in the constitution. More than that, articles 95 and 142, which deal with the budget system of the country, do not legally state that the budget system consists of state and local budgets, which are autonomous of state ones [5]. Thus, even after Supreme Rada had adopted the new Constitution, local government in Ukraine remained without financial autonomy, which undoubtedly hampered its development in accordance with European standards.

The problems of local self-governing ability to use its power fully in accordance with the standards of European right are reflected in the Law on Local Government in Ukraine", which has been acting since May, 1997. According to this legislative document, local self-governing authorities act within their power limits by themselves, as the autonomy and are not subordinated to each other. That is, the councils do not create the general single vertical line of power, and it fully coincides with the demands of European local self-governing charter and radically differs them from the structural system of the state power and local governing of the Soviet

period. Besides, the Law on Local Government in Ukraine finally stopped the artificial (to our mind) division into a base and representative levels, according to the Law of Ukraine on Local Councils of People's Deputies and Local and Regional Government edited on March 26, 1992. In accordance with this law district and regional councils were not acknowledged to be local self-governing authorities. And according to the Ukrainian Law on Local Government in Ukraine local and district councils are local self-governing institutions [6].

According to European standards, at least, to one of the existing variants in Western European countries, this law solves the problem of power authority distribution between executive representative local self-governing institutions on the level village-town-city. The mechanism of functional authorities' distribution has remained traditional. It is stable and looks like follows: the executive committee accountable to a council, and a chairman heads a council and an executive committee electoral system that have approximated local government in Ukraine to civilized European standards.

However, in the making local government in Ukraine came across numerous serious problem. Among them it is necessary to point out such problems as the preservation of certain contradictions in local self-governing legislative basis, which require its subsequent improvement: the bringing of legislature to conformity with international law standards, in the first place, with the demands of European local self-governing Charter and established of the civilized democratic countries of the European council. This problem should be specially emphasized in the financial and budget sphere of Ukrainian local governing activity, in the sphere of its material and financial security, in which the problem of efficient, just finance distribution is still open. However, the problem of clear-cut distribution of state and local budgets is closely connected with one more still unsolved problem – the clear-cut differentiation of power between state power bodies and local government, the differentiation of authority between different power rates and in the final analysis the interaction between local government and state power bodies. The problem of inadequate correlation between administrative territorial units and local councils requires urgent solution. The number of local councils (12000) is twice and a half as less as the number of populated areas (over 30000).

This complex of problems hampers a great deal the transformation of local government of Ukraine into really authoritative, autonomous and financially capable institution, which is able to solve effectively the local life actual problems of the democratic state in accordance with European traditions.

The process of local self-governing institutions has approximated to European standards as much as possible. In contrast to Soviet period, when the elections to the different councils of all levels were formal, the deputy staff was constantly and diligently regulated by party structures. They were the structures which sent the so called "rate", a good example to which is the experience of local councils' deputies' staff formation of the eighteenth convocation. In this way, the number of local councils' members in the party authorities' motions was 34,2%, farmers – 38,6%, non-party people – 56,2%, women – 49,2%, members of the komsomol – 21,1%, young

deputies (under 30-30%), the deputies elected for the first time – 36,3% [7], and the results of local councils elections in 1982 were accordingly 34,2, 38,4, 56,2, 49,2, 21,1, 32,9, 38,2% [8]. Thus, the party authorities' motions of Ukraine about the basic points of candidate staff coincided with the results of the elections to local councils almost in full.

We think that it proves convincingly enough that in the 80-ies local councils in the Ukrainian Soviet Socialistic Republic performed the function of decoration, "cover" in the process of the power authority implementations by party structures.

The local power bodies were formed and regulated by the Communist party only, which thought it impossible for any opposition to exist. Besides, the very term "local deputies", let alone its content as a form of territory communities self-organizing, was taken out of use in Soviet period of Ukrainian history. In the Ukrainian constitution of 1978 people's deputies' councils were only declared as state power and local self-governing authorities.

Certain practical steps in the direction of democratization in local power authorities' forming, and by this, practical renovation, local self-governing making in Ukraine, were made in March of 1990, when the elections of deputies to Supreme Rada and local Ukrainian Republic councils took place.

Legal regulation of local self-governing organizing and functioning in Ukraine during the 90-ies of XX century was ensured by a series of legislative documents. Apart from the above mentioned, we want to point out the Law of Ukrainian Republic December 7, 1990 on Local People's Deputies' Councils in Ukrainian Republic and Local Government; the Law February, 24, 1994 on the Elections of Deputies and Chairmen to Village, Town, District, City, Regional Councils, the Law February, 3, 1994 on Local Power and Self-governing Authorities' Forming"; the Law June 17, 1994 on the Changes and Supplement to the Law on the Elections of Deputies Chairmen to Village, Town, District, City, Regional Councils, the Law June 28, 1994 on the Changes and Supplement to the Law on Local Power and Self-governing Authorities' Forming; the Ukrainian President Edict December 30, 1995 on State Executive Power Authorities' Delegation to Chairmen and the Executive Communities of Village, Town and City Local Councils headed by them, the Law on Local State Administrations (1999) and others.

The Law on the Elections of Local Councils Deputies and Village, Town and City Chairmen should be pointed out among the valid normative documents which regulate the local self-governing organizing problems in Ukraine. It is the law which considerably approached the process of local self-governing organizing to European standards, despite that the majority system under which elections take place in one-mandate districts, was assumed as its basis and neither the proportional one, under which local self-governing authorities are formed according to party lists, nor the mixed system of self-governing bodies forming.

By the way, European local self-governing Charter does not demand that the elections to local government bodies should take place according to party lists or mixed system only. And the local elections results in 1998 proved that the party membership of local council deputies is not the main characteristic for voters. Thus

for instance, 482 of 6268 deputies of Zaporizhzhya district local councils are members of political parties [9]. The authority, grounding and political literacy of elected representatives of the people are the most significant features for our voters. In this connection the statistic data, which are indicative of the fact, that the educational and health protection institutions have become the second significant and influential group almost in all the regional local councils, are of noticeable importance: there are about 20% of doctors and teachers in the regional local councils [10].

Significant quantitative changes in local council staff have taken place in comparison with the staff of deputy corps of the previous (1994–1998) convocation. The educational level of local council deputies has considerably increased: more than 25% of village council deputies have a higher education. The member of town council deputies with a higher education is more than 50%, and district, city and regional council deputies' corps consists of 75% of the deputies with a higher education. Also the significant renovation of deputy corps in all the branches of local self-governing has taken place. The council staff has renovated average 80,4% [11]. The local council staff changes of this kind took place both in regions and in Ukraine on the whole. 67% of the deputies, who had never been council deputies of such a level, were elected to local councils of Ukraine in March 1998. Besides, one thirds of the elected 11 thousand of village, town and city chairmen did not fill this position during the previous convocation [12].

Thus, certain conclusions can be drawn on the grounds of comprehensive comparative analysis of local Ukrainian and European countries organizing and functioning, their legislative security. First of all the process of Ukrainian local self-governing renovation and formation during 90-ies of XX century basically took place on the lane of the local self-governing development tendencies of European countries and at the same time with the regard for the specific peculiarities and its historic traditions of public politic life in Ukraine. A well-grounded proof for this is the fact that almost all the main principles and rules, European civilized legislative standards, which regulate the organizing and activity problems of local government found the embodiment in the Constitution, in the Law on Local Government in Ukraine and other legislative acts.

Mostly due to this local government in Ukraine gradually turns into an important public power institution. It also takes place due to radical, real forming system transformation of self-governing representative bodies – local councils of all the rates. Elections in practice have turned into real citizens' will in comparison with Soviet period. The authors are deeply convinced that it is precisely the changes in the sphere of elections' system that brings the local self-governing of Ukraine nearer to the level of civilized European standard.

However, in the process of its setting up the Ukrainian self-governing came across a great number of serious problems. It is necessary to point out such problems as keeping of full resistance in law basis of local self-governing up to nowadays, that needs further improvement. It is necessary to put a legislative welfare in correspondence to the norms of international law, first of all, to the demands of the Europeans Charter of the local self-governing and an established experience of civilized

democratic EC countries. This problem is especially urgent in the sphere of finance and budget activity of the Ukrainian local self-governing. The sphere of material and finance maintenance and the questions of its clearer division is still open to public. The question of distinct division between state and local budgets is closely connected with one more unsettled problem, that is, distinct division of functional powers between state power organs and the local self-governing, authorities' division between different levels of power and, finally, interactions of the self-governing and the state power.

The problem of unequal correlation among administrative-territorial units and local councils (the latter ones are above 12.000) that are in two and a half times less than the number of settlements (more than 30.000).

All this complex of problems restrains the changing of the Ukrainian self-governing into a really authoritative, autonomous and financially capable institution, which is able to decide actual questions of local life in a democratic state, taking into consideration all European traditions.

### References

1. The European Charter of the local self-governing. Strasburg, 1985; Saenko Yur., Tkachuk A., Privalov Yur. The local self-governing in Ukraine. Problems and forecasts. – K., 1997, p. 15–16; Voronkova V.A. The local self-governing in post-totalitarian society. Theoretical foundations and problems of organization. Scientific works of History Department. Zaporizhzhya State University. Edition VIII. Zaporizhzhya. Tandem-U, 1999, p. 168–170.
2. The Constitution of Ukraine. – K., article 7.
3. The Constitution of Ukraine. – K., article 140.
4. The Europeans Charter of the local self-governing. – Strasburg, 1985, p. 3.
5. The Constitution of Ukraine. – K., 1996, articles 95, 142.
6. The Law of Ukraine: “About the local self-governing in Ukraine”, Ukraine. – 1997, the 12<sup>th</sup> of June.
7. The Results of Elections and Deputies' Staff to the local Councils of People's Deputies. – 1982. Articles (collections). M., 1982, p. 34–53. The State archives of Ukrainian Public Unites. – K.
8. Berezowsky V.P. The local self-governing: Modem situation and perspective of its development. Scientific works of History Department, Zaporizhzhya State University Edition 8. Zaporizhzhya. Tandem-U, 1999, p. 229.
9. The same, p. 228.
10. The same.
11. Grub V. The Parliamentary Control for Laws and Acts' Executing, adopted by the Verkhovna Rada of Ukraine on the questions of the local self-governing.
12. Herald to the Program of Ukrainian Parliament's Subject. 1999, the 9<sup>th</sup> of June, p. 22.

*The article was received 17.02.2016.*

В. Кравченко

**ОРГАНІЗАЦІЙНІ ТА ПРАВОВІ МЕХАНІЗМИ ФУНКЦІОНУВАННЯ  
МІСЦЕВОГО САМОВРЯДУВАННЯ УКРАЇНИ В КОНТЕКСТІ  
ДОСВІДУ КРАЇН ЄВРОПЕЙСЬКОГО СОЮЗУ**

*Пропоноване дослідження має на меті показати організаційні та правові механізми функціонування місцевого самоврядування України. Проаналізовано проблеми у сфері місцевого самоврядування, які стримують перетворення українського місцевого самоврядування на авторитетну, автономну установу, здатну вирішувати актуальні питання місцевого життя в демократичній державі, беручи до уваги всі європейські традиції.*

**Ключові слова:** *місцеве самоврядування, Європейський Союз, Європейська хартія.*

В. Кравченко

**ОРГАНИЗАЦИОННЫЕ И ПРАВОВЫЕ МЕХАНИЗМЫ  
ФУНКЦИОНИРОВАНИЯ МЕСТНОГО САМОУПРАВЛЕНИЯ  
УКРАИНЫ В КОНТЕКСТЕ ОПЫТА СТРАН ЕВРОПЕЙСКОГО СОЮЗА**

*Предлагаемое исследование имеет целью показать организационные и правовые механизмы функционирования местного самоуправления Украины. Проанализированы проблемы в сфере местного самоуправления, сдерживающие преобразование украинского местного самоуправления в авторитетное, автономное учреждение, способное решать актуальные вопросы местной жизни в демократическом государстве, принимая во внимание все европейские традиции.*

**Ключевые слова:** *местное самоуправление, Европейский Союз, Европейская хартія.*