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## **Constitutional and legal reform of local self-government in Ukraine: prospects and problems**

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*The article highlights the timeliness and importance of the constitutional and legal reform of local self-government in Ukraine. The article investigates current issues, perspectives and ways of local self-government development and its historical features as well as key domestic and international regulations governing its activities. The article reveals the current state of local self-government of developed countries, justifies the necessity to use positive and negative international experience to solve its typical and specific issues in our country. The article provides evidence for the necessity to bring certain provisions of the Constitution and individual laws of Ukraine to the standards of the European Charter of Local Self-Government. The article emphasizes the importance of*

*primary provision of capacity, mobility and building a flexible system of local self-government under the principles of decentralization and deconcentration of the power.*

**Keywords:** *constitutional and legal reform of local self-government in Ukraine, municipal reform, local self-government, decentralization, international experience.*

The local government, fundamental institution of the state system of every democratic country, assumes particular significance in terms of political and economic crisis. Its operation testifies the democratic nature of public authorities, depending on the extent of its development, the extent of its impact on local politics, the extent of democracy of the modern system of power.

Self-government today is a stable institution of municipal power that is able to fulfill its obligations to the community without unnecessary political debate and bear responsibility for its actions, as the solution of the most important issues of the daily life is its prerogative. However, it is the social and economic crisis that clearly reflects the shortcomings of its development in the sphere of authority exercise, work organization, formation mechanism, thereby encouraging it to a comprehensive reform.

It should be stressed that historically self-dependence and certain insulation from the state have become fundamental characteristics of the local self-government. It has been determined that the municipal government of ancient city-states was a kind of prototype that in the future led to many theories and concepts that are used now in developed democratic countries. In the ancient world city-states were quite common, some of them united in formal or informal unions, often under the command of one leader. Such unions in ancient Rome, for example, were united through the conquest of other states. Moreover, they united voluntarily in ancient Greece, the Peloponnese, for the purpose of common defense.

The next stage in the city self-government development, which has become a reference point of the local self-government theories formation in general, is Magdeburg Law. The appearance of Magdeburg Law is closely related to the state process in Europe in XIII. Thus, the burghers (city residents) considered the struggle for

Magdeburg Law provision as a way of gaining certain autonomy from the state and the legal framework to protect against encroachment of large landowners who demanded natural duties, taxes and etc. from the cities.

It is also necessary to pay attention to the fact that the ideological source of the local self-government was the doctrine of natural law, the essence of which is expressed in the concepts of justice that are embodied in the universal principles of freedom and equality. It is the recognition of such categories as justice, freedom and equality by national laws of various countries, norms of international law that allowed legalizing universal right of suffrage, the possibility of citizens to participate in the management of local affairs.

It is known that the transformation of local power in the XVIII–XIX centuries in the states of Western Europe is primarily related to electoral reforms. Thus, at the stage of the birth the idea of local self-government was aimed to develop the community spirit of the citizens. However, it gradually began to be applied in relation to civil and political rights and freedoms of a man and a citizen.

Today, the existing situation does not contribute to the effective implementation by Ukraine of the European integration policy, development of cooperation with European institutions, especially the Council of Europe and the European Union. In particular, the constitutional and legal principles of local self-government and the principles of the European Charter of Local Self-Government contradict each other despite the fact that Ukraine has committed to implement the latter to the full extent [1].

In this regard special consideration shall be given to the issue of compliance of the Ukraine Constitution and legislation principles with the European principles and standards for the decentralized government enshrined in the European Charter of Local Self-Government as well as identification of key directions of the current system of local self-government improvement. It is an advanced system of statutory and regulatory enactments that in this area should be the basis for developing and implementing the principles of the innovative model of social and state development, define a clear division of powers, which will provide the balance of power, protect Ukraine from conflict, authoritarianism and will be the next step

towards the implementation of such program provisions as establishment of a democratic, social, law-bound state in Ukraine.

The indicated facts completely refer to the definition of local self-government bodies in shaping the national innovation policy and clarifying their role in the creation of preconditions for effective innovation development of regions, separate territories and settlements, that is determined primarily by the degree of their economic and financial viability, innovation potential, which depend, including, on the degree of autonomy and capacity of territorial communities, authorities and local government officials.

Today, implementation of a comprehensive reform of any fundamental institution of the state system in the most modern countries is not possible without making changes to the Basic Law, regardless of the level of its constitutional and legal confirmation. However, it is worth to mention that the level of such regulation is not always the determining factor in this process, because the European Charter of Local Self-Government admits the absence of a constitutional confirmation of the local self-government. The most important role, in our opinion, is still played by the quality and regularity in conducting of such a regulation.

For example, the Basic Law of Canada consists of the constitutional laws, the main of which are the Constitutional Acts of 1867 and 1982 [2], does not directly regulate the organization and activities of the local self-governments but only states that these issues are regulated by the legislation of provinces. This approach makes possible the existence and functioning of a unique system of local self-government in each of the provinces as well as consideration of specific features of the particular area in the legislation. Such factors as the density and specific character of national composition of the province population, geographical location, economic and political situation in the region – they all collectively affect the definition of the structure, the order of formation and functioning of local self-government bodies in each province. In its turn, membership to a different legal family, a clear constitutional entrenchment of principles and substantive provisions of the local self-government of Germany does not prevent the functioning of a number of different models on the foundation of histori-

cal traditions and with regard to all modern reforms carried out by the EU member states.

Despite these differences, the local self-government of both countries although equally strong and capable, yet remains vulnerable to the problems and challenges of the similar nature. Therefore, we can conclude that a proper system of constitutional and legal regulation primarily involves finding a balance between the constitutional enshrinement of general principles and rules and their specific implementation through the adoption of appropriate laws and other legal acts. That is why before implementation of reforms it is necessary to form a clear vision of the problems to be solved, and ways to solve them. It is necessary to establish a required level of the constitutional entrenchment of the local self-government, which shall meet not only international standards, but also create a basis for further development of this institution. As the only way of the local self-government functioning is represented by its constant movement and development.

Support for the European integration course of our state is now impossible without a consistent implementation of provisions of all 11 Articles of the European Charter of Local Self-Government and contribution to their implementation by the government. Meanwhile the articles of the Charter governing: 1) financial resources; 2) administrative supervision; 3) competence of local authorities partially or completely contradict some norms of the Ukraine legislation.

At the same time, the list of basic articles promoted by the European Charter of Local Self-Government should not be taken as exhaustive. The local self-government is the right and the ability of local self-government bodies to regulate and manage within the law a substantial share of public affairs within their jurisdiction in the interest of the local population. It should be understood that any changes to organization and functioning of local self-government will be directly reflected on every inhabitant of each town, village, township, and the like.

Therefore, the capacity of the local self-government shall be primarily understood as the capacity of each particular individual. For example, the Act of 2011 [3] that reformed the system of local self-government and administration in the UK, amended the powers of local self-governments, increased the number of elected positions and

the possibility of holding referendums. But the key point of this Act was the thesis that: «Local self-government bodies are capable as much as every individual is capable», that is they have the same rights and opportunities and they can use them in such a manner as every single person can. The greatest legislator's attention in this Act was given exactly to this thesis in the context of its impact on the powers of local self-government bodies. These powers are considered to be wide and are limited only by the scope of the other legal acts.

The modern course of France in regard to the local self-government is now determined by a combination of acts under the common title The Third Act of Decentralization (Acte III de la décentralisation) [4]. This Act has been repeatedly criticized by numerous inter-regional and other non-governmental organizations and regional associations of France. In particular, representatives of the local self-government said that the Act needed to be improved. After a series of complex negotiations which resulted in the stir among the public caused by the Act, it was decided to split the Act into three parts: 1) questions concerning cities and metropolitan areas; 2) questions relating to regions and regional development; 3) clarification of questions of annexed territories competence.

It is worth mentioning that the current trends to ensure the decentralization of power in our state through constitutional and legal reforms in its initial structure is very similar to the corresponding reforms in France. However, it should be noted that the development level of the civil society, provision of rights and freedoms of a man and a citizen as well as legal consciousness in our country at this stage, although, is increasing, but remains incomparably below. This can create additional challenges in carrying out of reforms.

The most modern act governing all issues of local self-government in Sweden is the Act on the local self-government of 1992 (Local Government Act) [5]. According to this Act, the local self-government bodies of a particular region and their members have the right to solve tasks and challenges within their own territory. It should also be noted that the biggest part of the tasks performed by these bodies is clearly regulated by corresponding acts of specific legislation such as the Act on local service (Social Services Act 2001: 453) [6], the Act on medical services and health care services (The Health and Medical

Services Act, 1982, 763) [7], the Act on preschool education, education of the first and second stage (The Education Act 1985: 1100) [8]. It is reasonable to note that although local authorities have an opportunity to solve a range of issues relating to a particular region, their work is clearly regulated by relevant acts. Local self-government bodies can also issue regulatory acts relating to the areas of public order, traffic rules and some other issues.

Now Sweden can be specified as an example of clarity and consistency in regard to the issues related to the legal regulation of local self-government, because the presence of a large number of regulatory legal acts in the area of public relations does not reduce its effectiveness. This example demonstrates in a better way the cooperation between state and non-state bodies representing various spheres of public relations, as this method of legal regulation can hypothetically lead to competencies competition which, by the way, does not happen in practice.

Marking the «epoch» of major reforms, the new Constitution [9] and the new Act on the local self-government [10] has gained the force in Hungary since 2012. The above stated Act is primarily aimed at reforming the taxation system of the local self-government. According to the official information, the indebtedness of the local self-government in Hungary doubled and amounted to about 3.9 % of GDP in 2006–2009. The new Act set a goal to reduce the scope of taxation and increase its effectiveness. It is expected to a large extent to implement it by simplifying and accelerating the procedures for taxation and creation of conditions under which law-abiding citizens will be interested in paying taxes on time and in full.

The Act fixes the policy for stabilization of the local government, withdrawal of the system from the debt, reducing the fragmentation of the system and strengthening of control on the part of public authorities. For example, under the new Law, local self-government bodies can take loans only after obtaining the consent of central government bodies (The Ministry of Economic Affairs). In addition, it is planned to hold a series of measures to reduce the participation of third parties in the execution of subcontracts of national significance, thus it is planned to reduce unnecessary costs and improve the stability of the budget. Such a comprehensive approach in the conduct

of the constitutional and legal reform of the local self-government in Hungary in the part of its withdrawal from the crisis is of significant value for our state due to the similarity of problems and historical paths of its formation in the both states.

Proceeding from these examples, we can conclude that during the conduct of the constitutional and legal reform it is necessary to consider first of all that by regulating the local self-government we have a direct impact on the life of each person within the state. Ensuring the right to local self-government along with others is a key factor in establishment of the legal consciousness process, formation of legal behavior of a citizen and ensuring its participation in building a strong civil society, the creation and operation of which is impossible without the influence of the state. Therefore, it is clear that the direction of a modern democratic development of Ukraine as well as of most countries of the world requires transferring the emphasis on the self-government, and the principle of subsidiarity shall serve as a link between the power and the local government.

It is worth noting that a considerable part of the contemporary problems of the local self-government in our state originates from the time of the system reform following independence in 1991. Centrality of the system, competencies competition and actual delimitation of the local self-government both from the central executive authorities as well as from a particular individual – all are the consequences of the fact that the internal structure of the local self-government system was formed as a kind of a copy of the state government system of that time. This is evidenced by a large number of conceptually similar items in the legal confirmation of the indicated systems. The local self-government in a modern European country shall not be formed as a kind of a quasi-state. So, the first Law of Ukraine On Service in Bodies of Local Self-Government was in fact a «tracing» of the Law of Ukraine On State Service with all its categories, grades and the like. In our opinion, it is necessary to abandon this approach in the conduct of any further reforms in this area.

A close and interesting example for Ukraine is represented by experience of a consistent conduct of similar reforms in Poland. Leading experts in the field of the local self-government faced the need to create the actually capable system of the local self-govern-



ment. The public dialogue with participation of state power officials, leading academics, business representatives and citizens resulted in resolution of the issues of reorganization of the lowest level of the local self-government system (commune), creation of working groups to develop new acts regulating relations in the sphere of the local self-government as well as launch of preparation before the first free democratic elections to local councils. After all, every reform shall begin not only upon an initiative of the state but with the support and active participation of local population. The turning point of the local self-government reform in Poland, according to one of its founders, Jerzy Regulska, was the elimination of the so-called five key monopolies of the state: political, hierarchical, financial, administrative and monopoly of the ownership [11].

Taking into account the experience of Poland in settlement of many issues, current problems and possible solutions, it can be said that it is worth building effective local government only upon an initiative of the civil society. Therefore, each reform shall start not only upon the initiative of the state but also upon the initiative, support and active participation of the local population.

Summarizing all above-mentioned information, it seems obvious that ideal local self-government does not exist; all modern world systems have their advantages and disadvantages. The main factor of its ability is presented by constant movement and reforming. The modern pace of life constantly makes the state and its citizens meet new challenges such as the global economic crisis, the constant rise in energy prices and the search for more effective substitutes of energy products, the instability in the international relations of many states as well as other economic and social problems. It is a mobile and flexible local self-government that shall become a link between the citizen and the state to ensure both an adequate level of life of every person and a comprehensive development of the country as a whole in the modern world.

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**Конституційно-правова реформа місцевого самоврядування  
в Україні: проблеми і перспективи**

*Стаття висвітлює своєчасність та значимість проведення конституційно-правової реформи місцевого самоврядування в Україні. Досліджено як нагальні проблеми, перспективи та шляхи розвитку місцевого самоврядування, так і його історичні особливості, а також ключові внутрішні та міжнародні нормативні документи, що регулюють його діяльність. Розкрито сучасний стан місцевого самоврядування розвинених держав,*

обґрунтована необхідність використання позитивного та негативного міжнародного досвіду для вирішення його типових та специфічних проблем у нашій державі. Обґрунтована необхідність приведення норм Конституції та окремих законів України до стандартів Європейської хартії місцевого самоврядування. Однак зазначено, що рівень конституційного закріплення основ організації та функціонування місцевого самоврядування не завжди є визначальним у процесі проведення комплексної реформи даного фундаментального інституту державності, адже Європейська хартія місцевого самоврядування допускає відсутність такого закріплення. Важливу роль, на нашу думку, все ж відіграє якість та систематичність при проведенні такого регулювання. Відтак, належна система конституційно-правового регулювання передбачає перш за все пошук балансу між конституційним закріпленням загальних принципів та норм і конкретною їх реалізацією через прийняття відповідних профільних законів та інших нормативно-правових актів. Саме підтримка такого балансу при проведенні реформ має забезпечити спроможність, рухливість та гнучкість системи місцевого самоврядування на засадах децентралізації та деконцентрації влади, і перетворити його на сполучну ланку між громадянином та державою для забезпечення як достатнього рівня життя кожної людини, так і всебічного розвитку держави в цілому в сучасному світі.

**Ключові слова:** конституційно-правова реформа місцевого самоврядування в Україні, муніципальна реформа, місцеве самоврядування, децентралізація, зарубіжний досвід.

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### **Конституционно-правовая реформа местного самоуправления в Украине: проблемы и перспективы**

Статья подчеркивает своевременность и значимость проведения конституционно-правовой реформы местного самоуправления в Украине. Исследованы как насущные проблемы, перспективы и пути развития местного самоуправления, так и его исторические особенности, а также ключевые внутренние и международные нормативные документы, регулирующие его деятельность. Раскрыто современное состояние местного самоуправления развитых государств и обоснована необходимость использования положительного и отрицательного зарубежного опыта для

*решения его типичных и специфических проблем в нашей стране. Обоснована необходимость приведения норм Конституции и отдельных законов Украины к стандартам Европейской хартии местного самоуправления. Подчеркнута важность первоочередного обеспечения состоятельности, подвижности и построения гибкой системы местного самоуправления на основе принципов децентрализации и деконцентрации власти.*

**Ключевые слова:** конституционно-правовая реформа местного самоуправления в Украине, муниципальная реформа, местное самоуправление, децентрализация, зарубежный опыт.