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DEMOCRATIC ASPECTS OF UKRAINIAN LEGISLATION ON LOCAL DEMOCRACY INSTITUTIONS

The article analyses key principles of Ukrainian law on the institutions of local democracy. Much attention is given to the definition of the place of city council and its role in the process of democratic transformation. The specificity and trends of local self-government in modern Ukraine were found out in the article. It is stressed on the necessity of a balanced division of functions and powers between local administrations and local authorities. The study involved comparing techniques, analogies, analysis, synthesis and simulation modeling. Legal framework for the local political institutions development is summarized and set of strategic priorities and main tasks of state policy in this area were defined. Legal basis of interaction between local authorities and communities are studied.

Key words: reformation, Ukrainian legislation, democratization, local democracy, city council.

The effective activity of institutes of local democracy is in the ability of regional power to optimize the activity of the territorial council to implement organizational efforts of political, economic, social and other character. The important element, which warrants its self-sufficiency, is financial autonomy. As it was testified by a crisis on the East, it's extremely urgent rises a problem of reconsidering of mutual relationships by the system «center-regions», which mostly unifies needs of the regions of Ukraine. At the same time, regions of Ukraine differ from each other by different criteria, among which it's possible to prompt specificity of commercial activity, social needs, economic and resource potential, degree in-payment in GDP of a state. The factors of ethnic and political and confessional conflicts are added to the defect forms of existed system lately.

That's why the development of municipal authorities and social policy is a strategic sect of internal policy of a state. In the O. Novikov's view, social policy is a part of general policy and is based on a complex formula of combination of economy adequate condition with stipulation of needs and financial resources, which are necessary to spend for their satisfaction¹.

For the development of local democracy institutions it has become an important to the adoption of an Act of Ukraine «On bodies of population self-organization», which administers legal aspects of such unions functioning. The scopes of definitions are disclosed and the main principles and occasions of formation Population Self organization Body (further – PSB) in the Act. More specifically, the order of initiating of PSB foundation, counsel permit supply, content and order of Standing orders on PSB adoption are defined in Article 2².

The inherent and delegated powers of PSB are defined in Article 3, in other words, those that can be given to PSB by local counsel. The financial and economic framework of PSB and sources of incomes for the PSB activity are defined in Article 4. The organization of PSB activity administers Article 5, which indeed defines powers of steering committees and PSB office holders and decision making procedure.

Final clauses of law have quite general character and indeed don't have direct norms, important from the point of view of PSB organization and activity.

It's important to use European experience for making Population Self organization Body. Ukraine ratified European Charter of Local Self-Government, which formally is a part of Ukrainian legislation and must directly enforce in real life. Though, situation looks like not so optimistic on some reasons.

¹ Новікова, О., Гринецька, С.М., Шамілева, Л.Л. (2009). *Соціальна орієнтація економіки: механізми державного регулювання: монографія*; НАН України, Ін-т економіки пром-сті. Донецьк, 2009.

² Ткачук, А. (2012). *Місьцеве самоврядування та децентралізація. Практичний посібник*; Швейцарсько-український проект «Підтримка децентралізації в Україні – DESPRO». К. : ТОВ «Софія», 42.

For the first, the definition of local self-government by the Constitution of Ukraine and Act of Ukraine «About local self-government in Ukraine» and Charter differs in some way. In European Charter of Local Self-Government it's cited that:

«1. Local self-government means right and ability of local self-government bodies within the law to enforce regulation and governing the essential part of public affairs, which belong to their competence, in the interests of local population.

2. This right enforces by counsels and assemblies, members of which gather freely elected by secret voting in the frameworks of direct, equal, law of public elections and which can have accountable to them executive bodies. These standing orders in no way prevent using citizen meetings, referendums or any other form of citizen direct participation if it's allowed by law»¹.

In the definition of European Charter of Local Self-Government goes on not only about the law, but about real ability of local councils to enforce their activity. So, local self-government can't be there, where is no ability to enforce such powers.

The key distinction is that European Charter gives the right of local self-governing exactly to apparatus, but in our legislation it goes on about Territorial Communities. As a result, we have local self-governing bodies in a vast number of communities, where local self-governing can't be due to the European Charter of Local Self-Government.

Secondly, having ratified European Charter of Local Self-Government, Ukrainian Parliament didn't define its dissemination or non-dissemination on such local self-government bodies as district or regional councils. Such uncertain condition leads to constant discussions about noncompliance of our realities to European Charter of Local Self-Government, because district and regional councils don't have their own executive bodies.

In spite of this, the main principles of European Charter of Local Self-Government we should consider on a national and local levels in elaborating new laws or passing resolutions of local self-governing bodies.

The practice of applications of the Presidents of Ukraine to the Verkhovna Rada of Ukraine, in which they define the main trends of the development of society, exists in our country. In their messages to the Parliament all Presidents paid attention on municipal authority reformation.

In 2000, in the President of Ukraine message, L. Kuchma «Ukraine: promotion in the XXI century: Strategy of social and economic policy on 2000-2004» is noticed:

«The main goal of the administrative reform is in making an effective system of public administration, which would meet a standard of a democratic rule-of-law state with social oriented market economy.

It's issued a challenge on improvement of regulatory vertical and a structure of executive branch authorities on junctions, division and balancing of powers and responsibilities of government authorities and local self-government bodies in the field of endowment state and civil attendances.

It's foreseen an adoption of a new statutory wording «On public serving» and also The government employee rules of conduct Code, assurance of adequate control over its adherence. During 2000-2001 it will be held a complete re-credentialing of government employees of all levels and improved all mechanisms of competitive naming of personalities on official capacity of government employees»².

In the President of Ukraine speaker paper to the Verkhovna Rada of Ukraine «On internal and external position of Ukraine in 2005» is paid attention on the transformation of political system of Ukraine and on the devolution of powers to the regions. In particular, as it defined by a speaker paper, the purpose of local executive authorities reforming is assistance of local self-government development on the basis of rotation of maximal possible extents of local self-government powers and clear functional division of government powers (decentralization).

Such reforming can be done in two benchmarks. On the first benchmark the activity of regional public administrations must be assigned on social and economic and humanitarian region development. It's rational to change naming order of sole executives of public administrations giving such Cabinet of Ministers powers (it needs amending to the Constitution of Ukraine).

¹ *Європейська хартія місцевого самоврядування, м. Страсбург, 15 жовтня 1985 р.* : ратифіковано Законом № 452/97-ВР (452/97-ВР) від 15 липня 1997 р., підписано 6 листопада 1996 р. *Офіційний сайт Верховної Ради України.* <http://zakon2.rada.gov.ua/laws/show/994_036>

² *Послання Президента України Л. Кучми до Верховної Ради України «Україна: поступ у XXI століття: Стратегія економічної та соціальної політики на 2000 – 2004 рр.».* *Офіційний сайт Верховної Ради України.* <<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=276%D0%B0%2F2000>>

On the second benchmark on promulgation of sub-central self-government on the basis of regional public administrations must appear Regional council's executive bodies. Local self-government bodies' enforcement must be done by business divisions of the Ministry of justice and the Ministry of finance.

The essentials of reforming in this field must consist in extension of local communities' rights concerning decisions on matters of their functioning, increasing their economic autonomy, optimization of power divisions between local bodies of public authority and local self-government bodies and, as a result, ensuring of citizens of Ukraine a necessary number and quality of social and administrative attendances.

Taking into account a necessity of these problem solutions, they need extension and updating of local self-government legislative framework, first of all, in a part of clear division of powers between local bodies of public authority and local self-government bodies and on financial and economic issues.

Viktor Yuschenko pays attention on adoption of new Acts of Ukraine «On Territorial Communities self-governing», «On District local self-governing», «On local self-governing service» and other Acts of existing legislation¹.

In President V. Yanukovich speaking paper also pays attention on local self-government reforming, that is: «Modernization of Ukraine – is our strategic choice. The background of local self-government reforming is rational defined public conception of municipal democracy, because Community was the basis of self-governing during the whole history of humanity. Self-governed Communities they aren't only administrative –territorial, but entities, where an entrepreneurship is a mover of social and economic development, source of financial and material basis making for solution of social and cultural issues»².

It stands to mention, that not all precatory words were realized, though there has been observed positive dynamics of recent years. In P. Poroshenko turns, he tries to implement actively administrative-territorial reform in Ukraine, which has a goal to establish a definite level of administrative freedom of local self-government and to limit a level of state influence on its activity.

Regulation of sole components local institutes of democracy development provided, more specifically, by Acts of Ukraine «On citizen association», «On social dialogue in Ukraine», «On information», «On youth and child public organizations», «On employers organizations», «On population self-governing bodies», «On professional creative employees and creative unions», «On charity and charity organizations», «On volunteer activity», «On liberty of conscience and religious organizations», «On social services», «On fundamentals of state regulatory policy in the field of commercial activity».

The effective co-operating between institutes of local democracy and government bodies, enhancing of informational openness of state structure activity are performing Resolutions of Act of Ukraine «Public access to information» (2011), amendment to Act of Ukraine «On information» and Cabinet of Ministers Ruling «On probating of Order of Procurement of implementation of civil expert examination of the executive bodies activity» (2008). Initiating the instruments of the democracy of participation, the Cabinet of Ministers of Ukraine gave the Ruling «On ensuring participation of society in formation and realization of state policy» (2010)³.

Legal basis of local self-government give it real opportunity concerning solution of local problems and population protection on locally. It's determined by giving to local self-government not only definite legal, organizational and financial opportunities for own existence, but for making an effective regional regulatory model, which gives to local self-government real definite autonomy. As A. Povstyan points, just between the system of financial local self-government autonomy and social standards, which state must carry on is their main mutual interaction. The logic of such mutual interaction is not only a local self-government can get from a state the right to pool and allocate resources, but also that the question is in about qualified dimension of local self-government to find own resources for solution of own needs that is one of the dimensions of managerial autonomy⁴.

¹ *Послання Президента України В. Ющенка до Верховної Ради України «Про внутрішнє і зовнішнє становище України у 2005 році»*. Офіційний сайт Верховної Ради України. <<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0002100-06>>

² *Послання Президента України В. Януковича до Верховної Ради України «Модернізація України – наш стратегічний вибір»*. Офіційний сайт Верховної Ради України. <<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0002100-06>>

³ Єрмолаєв, А.В., Горелов, Д.М., Корнієвський, О.А. (2012). *Про стан розвитку громадянського суспільства в Україні: аналіт. доп. К. : НІСД.*

⁴ Повстян, А. (2010). *Забезпечення фінансової автономії органів місцевого самоврядування. Економіка та держава, №6, 123.*

It should be noticed, that local self-government isn't created only for executing of its functions and powers in the field of existed legislation. State, which gives resource base for local self-government only for solution of regional needs risks getting a number of social and economic problems, among which there is a detachment of local administrations from public interests of definite territory. For example, understanding of financial autonomy of local self-government only in the light of local taxes and fees is only a definite part, but not effective integral regulatory system. At the same time, the duties of local self-government have more fundamental and almost not solute problem of social policy realization on locations. And even local self-government realizes standards of social policy of a state on a definite territory.

To conclude that state unimpaired operation is impossible without solution of local self-government problems and making for its functioning a necessary resource infrastructure. Otherwise, state only establish definite social standards and execute them by itself and the local self-government role is only in reporting concerning the direction of resources on definite social needs.

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