

зацію, ліквідацію, встановлення та зміну меж районів у містах та містечках повинні прийматися відповідною міською радою, за погодженням з Верховною Радою України. При цьому вказані рішення повинні бути прийняті після проведення обов'язкових консультацій з населенням АТО, якої вони стосуються, та за поданням відповідної ради (обласної, районної, міської, містечкової, селищної, сільської).

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Regarding the Role of State Authoritative and Local Self-Government Bodies in Resolving the Issues on Administrative and Territorial Structure: National and Foreign Experience

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The role of state authoritative and local self-government bodies in resolving the issues on the administrative and territorial structure of Ukraine and some European unitary states on the basis of the proper provisions of normative legal instruments is analyzed. That there is a need to adopt a Law of Ukraine which would clearly prescribe the procedure for changes of the status of administrative and territorial units and their spatial boundaries is presented.

Keywords: status of administrative and territorial unit, change of the status and boundaries of an administrative territorial unit, legislation of European unitary states, parliament, government, president, local self-government bodies

Various constitutional acts of European unitary states stipulate that the main sources for initiating issues on formation, change of boundaries and status of administrative and territorial units (hereinafter, ATU) are the residents of the ATUs concerned. As a rule, the issues on formation, transformation or liquidation of an ATU are solved through the issuance of a separate act by the parliament of the state (in Italy, Spain, Liechtenstein, Luxemburg, the Netherlands, Moldova,

France, Portugal, and others). Although, the decisive role in solving the issues regarding the change of administrative and territorial structure (hereinafter, ATS) belongs to the President and the Council of Ministers in Belarus and Bulgaria, and to the Council of Ministers and the Prime Minister in Poland.

The formation of a complex view of the degree of exemplary legislative regulation of the procedure to change the status of ATUs and their spatial boundaries

is possible only on the basis of the comparative legal analysis of the proper national and foreign legal acts. This type of analysis allows for the defining of the roles of those bodies which participate in solving the issues on the ATS: parliament, government, head of the country, central and local bodies of executive power, bodies of local self-government. This range of difficulties was studied by I. Vermenych, K. Vitman, I. Kresina, A. Kovalenko, V. Novyk, I. Magnovsky, M. Matviishyn, M. Khonda, V. Iatsuba, etc. We can also consider it by defining the role of each of the mentioned authoritative bodies.

Parliament. According to Article 85 (item 29) of the Constitution of Ukraine, the Verkhovna Rada of Ukraine is authorized to form and liquidate districts; to set and change the boundaries of districts and towns; to categorize localities as towns; to name and rename localities and districts [1]. The parliamentary powers of forming and changing the status and boundaries of districts inside cities remain undetermined by the Constitution.

The current legislation stipulates the implementation of constitutional powers of Parliament while settling the issues on the ATS. So that, the Regulation 'On the Settlement of Issues on the Administrative and Territorial Structure' (the Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR № 1654 of 12 March 1981) determines the procedure to change the status of territorial units and their boundaries.

In considering foreign experiences, one can mention that the Law of the Republic of Lithuania 'On Administrative and Territorial Units of the Republic of Lithuania and Their Boundaries' prescribes the powers and the procedure of the realization of the Seimas jurisdiction in resolving issues on the ATS. In particular, Article 6 stipulates that the foundation of districts and the change of their boundaries, as well as the foundation and change of their centres and frontiers shall be set and abolished by the Seimas in response to a proposal of the authorities of the Republic of Lithuania. The boundaries of municipalities shall be changed when the number of municipalities or their boundaries is changed. The special Law sets forth that the foundation of municipalities and change of their boundaries, as well as the foundation and change of their centres and frontiers (Article 7) is carried out by the Seimas in response to a proposal of the authorities of the Republic of Lithuania and with regard to the opinion of local self-government [4]. Consequently, the experience of Lithuania does not foresee holding obligatory referendums on consultation with the population to settle the outlined issues.

The Law 'On Administrative and Territorial Structure of the Republic of Moldova' (Chapter 3) envisages that formation, liquidation and change of status of an ATU is carried out by Parliament after having held consultations with its citizens. The same procedure is applied while changing the boundaries of an ATU if it is conditioned by the necessity to transfer localities from one ATU to another or to replace its administrative centre [6].

Head of state. In Ukraine, the President has the right to legislative initiation and veto (articles 93, 94 of the Constitution of Ukraine) and, accordingly, can influence the adoption of laws concerning the settlement of issues on the ATS. At the same time, in some European states the main role in settling the issues on the change of status of ATUs also belongs to the president. For example, the Law 'On Administrative and

Territorial Structure and Procedure of Settling the Issues on the Administrative and Territorial Structure of the Republic of Belarus' stipulates that the President of the Republic of Belarus, in response to a request by the Council of Ministers of the Republic of Belarus and taking into account the opinion of deputies of the local councils, forms and liquidates regions and districts, sets and transfers their administrative centres, sets and changes the boundaries of the city of Minsk, regions and districts; if necessary, categorizes localities as cities of regional subordination, sets and changes their boundaries; if necessary, forms, changes and liquidates the districts in the cities, sets and changes their boundaries; taking into consideration the opinion of the population and having the consent of local councils' deputies, unites similarly-named ATUs which have a common administrative centre into a new one (Article 8) [Gavrylenko, 2007: 507].

Thus, one can trace the implicit and decisive role of the President of the Republic of Belarus in the process of settling the issues on changes of the boundaries of regions, districts, cities' districts and administrative centres. At the same time, the opinion of the population is taken into account only while uniting similarly-named ATUs.

In Bulgaria, the issues on the change of boundaries and the status of ATUs are regulated by the Law 'On Administrative and Territorial Structure of the Republic of Bulgaria'. Article 6 of the Law stipulates that the boundaries and administrative centres of the regions are determined by a Decree of the President of Bulgaria in response to a proposal of the Council of Ministers [5]. The above-mentioned Law also regulates the implementation of the appropriate powers of the President of Bulgaria. In particular, the change of boundaries of the regions can take place only within the bounds of existing communities. The changes are adopted by a Decree of the President in response to a proposal of the Council of Ministers of the state. The change of administrative centres and names thereof is also adopted by a Decree of the President in response to a proposal of the Council of Ministers (Article 26). The population can also initiate proper changes, that is why they are made only after consultations with citizens (Article 27) [5]. The changes of an administrative centre and name of the community are also made after consultations with the population of the proper territory; however, the final decision is taken by the President (Article 29). The change of the name of a locality and the name of city settlements of national importance is implemented by a Decree of the President of the Republic of Bulgaria (articles 34, 35) [5].

Government. The Law 'On Administrative and Territorial Structure of the Republic of Bulgaria' (Article 29) stipulates that in order to provide more favourable conditions for supplementing the daily needs of the population, health care, social, cultural, trade, transport, financial, legal, and other services, one or several districts can be separated from a proper community and incorporated to a nearby community which is situated in another district, according to a decision of the Council of Ministers taken in response to a proposal of the Minister for Regional Development and the governors of both districts, if the procedure prescribed by the Law is abided by [5].

The Council of Ministers of the Republic of Belarus submits the propositions on the ATS to the President of the Republic of Belarus to make the proper decisions; gives its consent to the regional councils of deputies on



the categorization of localities as towns of district subordination (Article 9) [Gavrylenko, 2007: 507].

The Law of the Republic of Poland 'On Municipal Self-Government' foresees (Article 4) that formation, unification, division and liquidation of municipalities, the establishment of their boundaries and names, as well as the determination of the location of their organs is carried out by the Council of Ministers after consultations with the inhabitants. Moreover, Article 4^a prescribes that a municipality or locality can obtain the status of a town under the Order of the Council of Ministers. The change of city boundaries is also made on the basis of a proper Order of the Council of Ministers issued after consultations with the local people [7]. The administrative districts can also attain the status of municipalities. The appropriate decision is taken by the Prime Minister in response to a request by the Minister of Interior Affairs and the administration, taking into account the opinion of the interested subjects (Article 5) [7]. Thus, in Poland the issues on the change of boundaries and status of the ATUs are settled at the level of executive power (i.e., by the Council of Ministers, the Prime Minister).

Central and local bodies of the executive power. According to the norms of the Regulation 'On Settling Issues on the Administrative and Territorial Structure' of 12 March 1981 [3], the formation and liquidation of districts and districts in cities, as well as the establishment and transference of district administrative centres in Ukraine is also carried out by the legislative body in response to a request by the executive committees of the proper regional, city or city of republican subordination councils. The categorization of localities as cities of republican, regional or district subordination, the establishment and change of their boundaries, and the changes of their subordination are also carried out by the Verkhovna Rada of Ukraine in response to a request by the executive committees of the proper regional, city or city of republican subordination councils. At the same time, the Regulation 'On Settling Issues on the Administrative and Territorial Structure' stipulates that the change of a district's boundaries is carried out by the executive committee of the regional council in response to a request by the executive committees of the proper district, city or city of republican subordination councils of people's deputies. The establishment and change of boundaries of the city districts is carried out by the city council in response to a request by the executive committees of the proper city district councils. The categorization of localities as urban-type settlements, the establishment and change of their boundaries, as well as changes of their subordination are carried out by the executive committee of the regional council in response to a request by the executive committees of the proper district, city or city of republican subordination councils. The unification of rural settlements and change of their subordination is also carried out by the executive committee of the regional council in response to a request by the executive committees of the proper district, city or city of republican subordination councils [3].

In considering foreign experiences, we can mention that, taking into account the opinion of the proper councils of deputies of lower rank, the regional councils of the deputies of the Republic of Belarus submit their proposals to the Council of Ministers. These proposals concern the establishment and change of boundaries of a region; the formation and liquidation

of districts inside the regions, the establishment and change of their boundaries, and the establishment and transference of their administrative centres; the categorization of localities as cities of regional subordination; the formation and liquidation of districts in the cities of regional subordination, and the establishment and change of their boundaries; the transference of urban-type and rural settlements to the administrative subordination of the deputies' city councils, the executive and regulatory bodies of the cities of regional subordination; the establishment and change of boundaries of the cities of regional subordination. In addition, the consent of the Council of Ministers is necessary to categorize localities as towns of district subordination or urban-type settlements; to establish and change the boundaries of towns of regional subordination and urban-type settlements; to settle the issues on the transference of urban-type and rural settlements to the administrative subordination of the deputies' city councils, the executive and regulatory bodies of the towns of district subordination (Article 10) [Gavrylenko, 2007: 507].

The district councils of deputies of the Republic of Belarus have the following scope of rights: to make proposals to the regional councils of deputies to establish and change the boundaries of districts, towns of district subordination, urban-type settlements and village councils; to categorize localities as towns of district subordination or urban-type settlements; to transfer urban-type and rural settlements to the administrative subordination of the deputies' city councils, executive and regulatory bodies of the towns of district subordination; to categorize localities as rural settlements; to liquidate and form rural settlements, as well as to establish and change their boundaries (Article 11). The city councils of deputies make proposals to the regional councils of deputies to categorize localities as cities of regional subordination; make proposals to the regional councils of deputies (and the Minsk city council of deputies makes proposals to the Council of Ministers of the Republic of Belarus) to establish and change the boundaries of a city, to form and liquidate the districts in cities, as well as to establish and change their boundaries, to transfer urban-type and rural settlements to the administrative subordination of the city councils of deputies, executive and regulatory bodies (Article 12). The settlement and village councils of deputies make proposals to the district councils of deputies to categorize localities as towns of district subordination, urban-type or rural settlements and to establish and change the boundaries thereof (Article 13) [Gavrylenko, 2007: 507].

Thus, in the Republic of Belarus one can trace the clear subordination of local councils to higher councils while settling the issues on the ATS. All the issues on change of the status and boundaries of ATUs are resolved by higher bodies.

Local self-government bodies. Some powers of local self-government bodies concerning the settlement of the ATS issues are set forth in the Law of Ukraine 'On Local Self-Government in Ukraine' of 21 May 1997. In particular, the legislators set forth the right to consider the issues on the ATS within clearly defined limits and exclusively at the plenary meetings of village, settlement and city councils (Item 41 of Article 26). The Law determines that the executive bodies of village, settlement and city councils are authorized to prepare and introduce for consideration

by the council the issues on the denomination (change of the name) of streets, alleys, boulevards, squares, parks, public gardens, bridges and other buildings located in the territory of the proper locality (Article 37). Within limits and due to the order prescribed by law, the district and regional councils settle issues on the ATS, but they can do that exceptionally at their plenary meetings (Item 26 of Article 43) [2].

The Polish Law 'On Municipal Self-Government' stipulates that auxiliary units (such as rural areas, districts, settlements, etc.) can be founded in the territory of a municipality. A city which is located within the territory of a municipality can also be equaled to an auxiliary unit. The auxiliary units are formed by the municipal council which takes decision after consultations with the inhabitants or on their initiative. The rules of formation, unification, division, and liquidation of auxiliary units are defined by the specific charter of the municipality (Article 5) [7]. At the same time, some researchers consider that the Polish experience of local self-government reformation could be successfully applied in Ukraine, especially in respect to the improvement of the territorial basis of local self-government that is the core problem of modern political and legal development in our state [Frolov, 2011: 23].

In summarizing the above-mentioned statements we can conclude that many European states have adopted regulatory acts (including constitutional provisions) which accurately prescribe the powers of state and local self-government bodies concerning the settlement of issues on the ATS. The analysis of the legislation of these countries allows us to assert that Parliament is a competent body to make decisions on change of boundaries and the status of ATUs, however in some states this role is carried out by the president (Belarus, Bulgaria) or the bodies of executive power (Poland). The outlined issues are settled in response to a request by the executive power bodies and their servants. In the majority of European unitary states, the issues on the change of status and boundaries of ATUs are settled after consultations with the population [Tvarkovska, 2011: 22].

After taking into consideration the above-mentioned provisions of different legal acts, one can state that the legal field of settling the issues on the ATS in Ukraine requires improvement as far as it contains contradictory regulations. For example, in accordance with the Constitution of Ukraine, the Verkhovna Rada of Ukraine has less powers in comparison with those defined in the Regulation 'On Settling Issues on the Administrative and Territorial Structure of the Ukrainian SSR', and that is not in line with the analogous experience of other European unitary states. In addition, in Ukraine there are a lot of out-of-date legal norms and there is no specific law to settle the issues on the ATS.

Consequently, there is an obvious necessity to adopt a Law of Ukraine where the procedure of the change of status of ATUs and their spatial boundaries would clearly be determined. This necessity is predetermined by the fact that effective legal acts regulating the above-mentioned procedure are out-of-date and partially contradict the Constitution of Ukraine. The adoption of such a law would become one of the vital steps on the journey to Ukraine's European integration.

Thus, taking into consideration the experiences of the majority of European states, we think that it is appropriate to specify some legislative powers of the Verkhovna Rada of Ukraine while settling the issues on the ATS. In particular, the powers of the Verkhovna Rada of Ukraine concerning the territorial structure have to include settlement of the following issues: the formation, liquidation, reorganization (division, unification) of regions and districts, as well as the

establishment and change of boundaries thereof; the categorization of a locality as a city, a city with special status, a town, a settlement, a village, as well as the establishment and change of their boundaries; the liquidation and reorganization of cities, cities with special status, towns, settlements, villages. Decisions on the formation, reorganization, liquidation, establishment and change of boundaries of districts within cities and towns should be taken by the proper city council upon approval of the Verkhovna Rada of Ukraine. The mentioned decisions have to be taken after obligatory consultations with the population of the proper ATU, and in the response to the request of the proper council (regional, district, city, town, settlement, village).

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