

UDC 342.2
DOI

I. V. Idesis
Ph.D. (Law),
Associated Professor at the Department of International and European Law
National University "Odessa Law Academy"
orcid.org/0000-0001-5658-7160

LEGISLATIVE REGULATION OF LOCAL SELF-GOVERNMENT OF UKRAINIAN CITIES

After the proclamation of Ukraine's independence in 1991, local self-government in Ukraine is not regulated separately for such administrative-territorial units as cities (exceptions are cities with a special status). Most authors only state this fact, but do not make constructive suggestions aimed at improving the situation.

The purpose of the article is to consider and analyze the modern laws of Ukraine, which implemented the legal regulation of local self-government in the cities of Ukraine.

The study of the laws of Ukraine regulating local self-government gave grounds to note that the peculiarities of local self-government in cities are fragmented in the Law "On Local Self-Government in Ukraine", Electoral Code and are completely absent in such important laws-sources of municipal law as Law "On Voluntary Association of Territorial Communities", "On the Status of Deputies of Local Councils". Regarding the latest act, the following directions of amendments aimed at differentiating the status of deputies of local councils of rural and urban settlements are proposed: differences in the rights and responsibilities of deputies of local councils and taking into account different quantitative composition of local councils (depending on the number of members); accordingly – more or less complex internal structure of local councils, their executive bodies.

It is noted that with the adoption on February 5, 2015 of the Law "On Voluntary Association of Territorial Communities" at the present stage of municipal reform began to follow the trend of refusing to unify local government in urban and rural areas (in connection with the introduction of the institute of elders). Proposals for amendments to Art. 7 of this Law "Preparation of decisions on voluntary association of territorial communities" and on supplementing Art. 8 "Formation of a united territorial community" paragraph 1-1 in the proposed wording.

Key words: municipal charters, territorial collective, local government, constitution, local constitution.

I. B. Ідесіс. ЗАКОНОДАВЧА РЕГЛАМЕНТАЦІЯ МІСЦЕВОГО САМОВРЯДУВАННЯ УКРАЇНСЬКИХ МІСТ

Після проголошення незалежності України в 1991 р. місцеве самоврядування в Україні саме для таких адміністративно-територіальних одиниць, як міста, не регламентується окремо (виключеннями є міста з особливим статусом). Більшість авторів тільки констатує цей факт, але не висуває конструктивних пропозицій, спрямованих на покращення ситуації.

Метою статті є розглянути й проаналізувати сучасні закони України, в яких здійснено нормативно-правову регламентацію місцевого самоврядування в містах України.

Дослідження законів України, що регламентують місцеве самоврядування, надало підстави зазначити, що особливості місцевого самоврядування в містах фрагментарно закріплені в Законі «Про місцеве самоврядування в Україні», Виборчому кодексі й повністю відсутні в таких важливих законах-джерелах муніципального права, як Закон «Про добровільне об'єднання територіальних громад», «Про статус депутатів місцевих рад». Щодо останнього акту, запропоновано такі напрями внесення змін, спрямованих на диференціацію статусу депутатів місцевих рад сільських і міських населених пунктів: наявність відмінностей у правах та обов'язках депутатів місцевих рад і врахування різного кількісного складу місцевих рад (залежить від кількості членів територіальних громад) і, відповідно, більш або менш складної внутрішньої структури місцевих рад, їхніх виконавчих органів.

Зазначено, що з прийняттям 5 лютого 2015 р. Закону «Про добровільне об'єднання територіальних громад» на сучасному етапі муніципальної реформи почала простежуватись тенденція щодо відмови від уніфікації місцевого самоврядування в міських і сільських населених пунктах (у зв'язку з введенням інституту старост). Сформульовано пропозиції щодо внесення змін і доповнень до ст. 7 Закону «Підготовка рішень щодо добровільного об'єднання територіальних громад» і щодо доповнення ст. 8 «Утворення об'єднаної територіальної громади» пунктом 1-1 у запропонованій редакції.

Ключові слова: статут територіальної громади, територіальна громада, місцеве самоврядування, конституція, місцева конституція.

Introduction. After the proclamation of Ukraine's independence in 1991, local self-government in Ukraine is not regulated separately for such administrative-territorial units as cities (exceptions are cities with a special status). Most authors only state this fact, but do not make constructive suggestions aimed at improving the situation (for example, see [1; 2]).

The research of the relevant issues, thus, can be characterized as low: such well-known doctors of law, professors-researchers of municipal law issues, as professors Baimuratov, Batanov,

Lyubchenko, Mishyna, Orzikh, Frytsky, others, did not pay separate works of monographic character to the issue of separation of local self-government in cities from local self-government in rural settlements. Accordingly, an important scientific task is to formulate such proposals, and for this it is necessary to have an idea of the modern legal regulation of local self-government in the cities of Ukraine, which exists at the national level.

The purpose of the article is to consider and analyze the modern laws of Ukraine, which

implemented the legal regulation of local self-government in the cities of Ukraine.

Research results. In Ukraine, as of January 1, 2021, there were 2 cities with special status, 460 other cities and 39 552 rural settlements [3]. It should be noted that the peculiarities of the implementation of local self-government by 460 territorial communities should be taken into account at the national level.

The Constitution of Ukraine stipulates that local self-government is the right of a territorial community – villagers or voluntary association of residents of several villages, settlements and cities – to independently decide local issues within the Constitution and laws of Ukraine [4].

The Constitution focuses on local government in cities twice:

- in Part 2 of Art. 140, which stipulates that the peculiarities of local self-government in the cities of Kyiv and Sevastopol are determined by separate laws of Ukraine;
- in Part 5 of Art. 140, according to which the issue of organization of district management in cities belongs to the competence of city councils.

In all other cases, local self-government in cities is considered together with local self-government of villages and settlements.

According to the Basic Law, local self-government in villages, settlements and cities is carried out by the territorial community in the manner prescribed by law, both directly and through local governments: village, town, city councils and their executive bodies [4].

The Constitution provides for the election for 5 years by residents of villages, settlements and cities of local councils, as well as the village, settlement, city mayor, who heads the executive body of the council and chairs its meetings.

Finally, Art. 146 of the Basic Law establishes that other issues of organization of local self-government, formation, activity and responsibility of local self-government bodies are determined by law.

Examining the constitutional regulation of local self-government, associated professor Nazarko notes that “in modern constitutions, including in Ukraine, the institution of urban self-government has not found proper regulation” [5, p. 276]. It should be noted that it is unlikely that city self-government needs its regulation at the constitutional level. First, the ineffectiveness of such an approach is evidenced by the practice of foreign countries, which was pointed out by the author of the quotation. Secondly, the constitution is the basic law, which regulates only the basic social relations. And the concretization of constitutional norms is possible and necessary in the current legislation.

Ukraine is no exception to this rule – the provisions of the Constitution of Ukraine on local self-

government are specified in current legislation. The need for a concise analysis of local self-government of urban territorial communities in this study is due to significant changes in municipal legislation that occurred during 2020. In particular, in February the Law of Ukraine “On Voluntary Association of Territorial Communities” was adopted, during 2020 the Law “On Local Self-Government in Ukraine” was amended 9 times.

Constitutional norms on the organization of local self-government in cities are established by the Law of Ukraine of May 21, 1997 “On Local Self-Government in Ukraine”.

It should be noted that in this Law, as well as in the Constitution of Ukraine, only a few norms apply to local self-government only in cities. More precisely, no separate norms are established for cities, the legislator’s attention is sometimes drawn to the peculiarities of local self-government in cities with district division. In Part 2 of Art. 5 of the Law states that in cities with district division by the decision of the territorial community of the city or city council in accordance with this Law may be formed district councils in the city. District councils in cities form their executive bodies and elect the chairman of the council, who is also the chairman of its executive committee [6]. Further, according to the text of the Law, there is sometimes a specification of certain norms in relation to district councils in cities, in particular, they are included in the system of local self-government – for example:

- Art. 41 is devoted to the peculiarities of the powers of district councils in cities and their executive bodies;

- Art. 79 “Early termination of powers of the village, settlement, city mayor” contains certain indicators for cities, and cities of different types. Thus, in accordance with paragraph 6, the decision to make proposals to recall the village, town, city mayor on the people’s initiative is taken at a meeting of voters in the amount of at least: 50 people to recall the mayor of cities of district importance; 200 people to recall the mayor of regional significance; 400 people to recall the mayor of Kyiv and Sevastopol. The number of members of the initiative group is in case of recall: the mayor of district importance – not less than 20 people; the mayor of the city of regional significance – not less than 50 people; the mayor of Kyiv and Sevastopol – not less than 75 people. Paragraph 7 states that in support of the proposal to recall the village, settlement, city mayor, the number of signatures must be collected in excess of the number of votes cast for him in the local elections, as a result of which he was elected village, town, city mayor. Collection of signatures is carried out in case of recall of: the mayor of the city of district significance – within twenty days; the mayor of the city of regional

significance, the cities of Kyiv and Sevastopol – for thirty days. The Territorial Election Commission checks the correctness of the signature sheets, the number of collected signatures in case of recall: the mayor of cities of district significance – within twenty days from the date of their receipt; the mayor of cities of regional significance – within thirty days from the date of their receipt; the mayor of Kyiv and Sevastopol – within thirty-five days from the date of their receipt;

– Part 2 of Art. 5 establishes that in cities with district division by the decision of the territorial community of the city or city council according to this Law district councils in the city can be formed. District councils in cities form their executive bodies and elect the chairman of the council, who is also the chairman of its executive committee [6].

It should be noted that these optional elements of the system of local self-government in cities, which by the way are not given much attention in the Law “On Local Self-Government in Ukraine” are the most promising in terms of regulating their creation and functioning in the statutes of territorial communities.

Article 5 of the Law “On Local Self-Government in Ukraine” is entitled “System of Local Self-Government”, and from its content it is possible to draw a conclusion about the structure of the system of local self-government in the cities of Ukraine. According to Art. 5 of the Law, the system of local self-government of Ukrainian cities includes another element, in addition to local self-government bodies of districts in cities, the presence of which is not mandatory – it is the self-organization of the population. Mandatory elements, including the system of local self-government of cities, include: territorial community; City Council; Mayor; executive bodies of the city council [6].

Concluding the review of local self-government in cities under the Law “On Local Self-Government in Ukraine”, we note that after 2015, with changes in the possibility of introducing the position of mayor (see the Law of Ukraine of February 5, 2015 “On Voluntary Association of Territorial Communities” [7], a tendency to refuse the unification of local self-government in urban and rural settlements began to be traced.

The Law of Ukraine of February 5, 2015 ‘On Voluntary Association of Territorial Communities’ does not provide for the specifics of the participation of territorial communities of cities in the voluntary association of territorial communities [7]. For example, if the territorial community of a city and a village are united, it is obvious that what is called “accession” (de facto “absorption”) occurs in civil law, and if the territorial communities of two cities, two settlements, etc. are united, rather above all, what is called “association” in civil law occurs. Also, it would be possible to take into account the greater degree of difficulty in expressing the opinion of members

of the territorial community of the city on the association compared to the opinion of members of the territorial community of the rural settlement.

We propose to supplement the Law “On Voluntary Association of Territorial Communities” with relevant provisions. At the stage of designing decisions on voluntary association of territorial communities, one of the projects prepared together with the list of territorial communities to be united, indicating the relevant settlements, and determining the administrative center of the united territorial community and its name, should be there is also a draft statute of the territorial community, which is formed as a result of the association.

Article 4 “Basic conditions of voluntary association of territorial communities” to add item 5 of the following content: “5. The unification of territorial communities takes place simultaneously with the adoption of the statute of the united territorial community”.

Make the following changes and additions to Article 7 “Preparation of decisions on voluntary association of territorial communities”:

A) paragraph 2 shall be worded as follows:

“1. Draft decisions on voluntary association of territorial communities should, in particular, contain:

- 1) a list of territorial communities to be united, indicating the relevant settlements;
- 2) determination of the administrative center of the united territorial community and its name;
- 3) a plan of organizational measures for voluntary association of territorial communities;
- 4) draft Statute of the united territorial community”.

B) paragraph 3 shall be worded as follows:

“3. Draft decisions on voluntary association of territorial communities (except for the draft Statute of the united territorial community) approved by village, settlement, and city councils shall be submitted to the Council of Ministers of the Autonomous Republic of Crimea, the regional state administration within five days. laws of Ukraine”.

Article 8 “Formation of a united territorial community” shall be supplemented with paragraph 1-1 as follows:

“1.1. The charter of the united territorial community is approved by village, settlement, city councils simultaneously with the decision on voluntary association of territorial communities, or at a local referendum of the territorial community, if the support of voluntary association of territorial communities takes place in a referendum.

The charter of the united territorial community comes into force from the moment of formation of the united territorial community (item 1 of item 8 of this Law)”.

The Electoral Code of Ukraine approaches the local elections of councils of rural and urban settlements with a certain differentiation [8]. There is also some differentiation regarding the mayoral election. Although, it does not concern the type of settlement – rural or urban settlement – but the size of the territorial community of the city, more precisely – the number of voters living in the city.

The Law of Ukraine of July 11, 2002 “On the status of deputies of local councils” does not contain any features of the status of deputies of city councils in comparison with deputies of other councils [9]. If we compare the status of deputies of district and regional councils with the status of deputies of village, settlement and city councils, the deputies of the first group of councils should undoubtedly maintain such stable and constant contact with voters as deputies of the second group of councils, because territorial communities are objective, smaller in population than the region or district. The relevant difference should be reflected at least in the rights and responsibilities of local council deputies. And this is just one example.

If we compare the status of deputies of local councils of rural and urban settlements, it should be noted that it may have features. It should be noted that this is appropriate – given, for example, the different number of members of rural, urban and urban communities (yes, for communication and feedback with community members use different tools, taking into account the different degrees of stability between them), different the number of local councils (depending on the number of members of territorial communities) and, accordingly, the more or less complex internal structure of local councils and their executive bodies.

Conclusions. The study of the laws of Ukraine regulating local self-government gave grounds to note that the peculiarities of local self-government in cities are fragmented in the Law “On Local Self-Government in Ukraine”, Electoral Code of Ukraine and are completely absent in such important laws-sources of municipal law as Law “On Voluntary Association of Territorial Communities”, “On the Status of Deputies of Local Councils”. Regarding the latest act, the following directions of amendments aimed at differentiating the status of deputies of local councils of rural and urban settlements are proposed: differences in the rights and responsibilities of deputies of local councils

and taking into account different quantitative composition of local councils (depending on the number of members); accordingly – more or less complex internal structure of local councils, their executive bodies.

It is noted that with the adoption on February 5, 2015 of the Law “On Voluntary Association of Territorial Communities” at the present stage of municipal reform began to follow the trend of refusing to unify local government in urban and rural areas (in connection with the introduction of the institute of elders). Proposals for amendments to Art. 7 of this Law “Preparation of decisions on voluntary association of territorial communities” and on supplementing Art. 8 “Formation of a united territorial community” paragraph 1-1 in the proposed wording.

References

1. Mishyna N. Hermeneutics in the Constitutional Law of Ukraine. *Наукові праці Національного університету «Одеська юридична академія»*. Одеса, 2021. Т. 28 (XXVIII). С. 104–109.
2. Mishyna N.V. Guarantees of Local Government in Ukraine | Гарантії місцевого самоврядування в Україні. *ЮРИДИКА | JURIDICA*. 2020. № 2. С. 15–18.
3. Кількість адміністративно-територіальних одиниць в Україні на 1 січня 2021 р. URL: http://www.ukrstat.gov.ua/operativ/operativ2020/ds/ator/ator2020_u.htm.
4. Конституція України : Закон України від 28 червня 1996 р. № 254к/96-ВР / Верховна Рада України. *Відомості Верховної Ради України*. 1996. № 30. Ст. 142.
5. Назарко А.Т. Міське самоврядування в Україні: проблеми конституційно-правової інституціоналізації. *Конституційне забезпечення чергового етапу реформування місцевого самоврядування в Україні. Правові та інституційні механізми забезпечення сталого розвитку України* : матеріали Міжнародної науково-практичної конференції, м. Одеса, 15–16 травня 2015 р. : у 2 т. Т. 1 / відп. ред. М.В. Афанасьєва. Одеса : Юридична література, 2015. С. 275–277.
6. Про місцеве самоврядування в Україні : Закон України від 21 травня 1997 р. № 280/97-ВР / Верховна Рада України. *Відомості Верховної Ради України*. 1997. № 24. Ст. 170.
7. Про добровільне об'єднання територіальних громад : Закон України від 5 лютого 2015 р. № 157-VIII / Верховна Рада України. *Відомості Верховної Ради України*. 2015. № 13. Ст. 91.
8. Виборчий кодекс України : Закон України від 19 грудня 2019 р. № 396-IX / Верховна Рада України. URL: <https://zakon.rada.gov.ua/laws/show/396-20>.
9. Про статус депутатів місцевих рад : Закон України від 11 липня 2002 р. № 93-IV / Верховна Рада України. *Відомості Верховної Ради України*. 2002. № 40. Ст. 290.