

Local Self-government in the Ukrainian Authority's Territorial Organization: Problems and Priorities of the Development

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The aim of this article lies in generalization of the results of research on the local self-government functioning problems in the Ukrainian territorial authority system and specification of priorities on development. Topicality of the present theme is stipulated by the necessity to develop the Ukrainian statehood based on democratic principles, to be aware of the role of the local self-government and state engaged in administration of the territories, to form such territorial authority model that would fit the modern European standards and would be directed at provision of rights, liberties and legal interests of each individual. It is shown, that further development of the local self-government in the territorial authority's organization should be grounded on reforming of the administrative-territorial system of the country, regulation of powers of local executive bodies and managing activity of local government bodies in the development of the respective territories.

Keywords: *local self-government, territorial authority's organization, territorial administration, administrative-territorial system, area development.*

Raktažodžiai: *vietos savivalda, valdžios teritorinė struktūra, teritorijos administracija, teritorijos administracijos sistema, teritorijos vystymas.*

Introduction

Development of the Ukrainian statehood, according to democratic dominants, has objectively grounded the necessity of the awareness of the role of local self-government and state engaged in administration of the territories, formation of

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such territorial authority's model that would fit the modern European standards and would be directed at provision of rights, liberties and legal interests of each individual. This problem cannot be solved without perceiving the achievements of the world administration thought, accounting for the results of the domestic scientific studies, generalizing the approaches to the territorial administration as used in different countries.

The issue of the local self-government organization was acute for many domestic scientists and specialists, first of all for: V. M. Babayev, Y. P. Bytyak, V. I. Bordenyuk, V. V. Kravchenko, V. S. Kuibida, O. Y. Lazor, M. I. Pitzyk, M. O. Pukhtinsky, A. F. Tkachuk, etc. Alongside, exactly the study of problems of the territorial authority's organization, related with imperfection of the law as regards the authorities of the administrative bodies, lack of coordination between the existing administrative-territorial system and the territorial administration bodies' system have not been developed profoundly.

The aim of this article lies in generalization of the results of research on the local self-government functioning problems in the Ukrainian territorial authority system and specification of priorities on development in terms of the experience of regional administration in European countries.

1. Peculiarities of local self-government in the territorial authority system of Ukraine

Today there is a multi-level system of territorial administration in Ukraine with a totality of various relations on horizontal and vertical lines, making a pyramid-like system. In general such situation corresponds to the provisions on the conventional social-governmental concept of the local authorities' structure.

Pursuant to the *Ukrainian Constitution* the only source of authority in the country are the people, who realize it directly, through the governmental authorities and local self-government authorities [9, page 5]. Public authority is represented through two systems: governmental authority, which is divided into the legislative, executive, judicial branches, and local self-government authority, which is separated from the governmental one as specified and guaranteed by the *Constitution of Ukraine*.

The simplified layout of the territorial organization of the Ukrainian authorities (excluding the Autonomous Republic of Crimea, cities of Kyiv and Sevastopol, which governing has organizational and structural-functional features connected with their specific status as stipulated by the law) is given in the Figure 1.

Basic fundamentals of activity of the executive authorities on a local level and those of self-government authorities are fixed in the Constitution of Ukraine, regulated by standards of the respective legal and other regulatory-legal acts. Legal grounds to regulate the area development of the territories have been formed [10].

Thus, subject to the Law of Ukraine "On Local Governmental Administrations", the local governmental administrations work in the regions, districts and cities with a special status (city of Kyiv, city of Sevastopol) and comprise the components of the administrative vertical [7].

Besides local governmental administrations as major managerial cores of regional and district levels, the components of the territorial authority organization are represented by the

territorial bodies of central executive authorities (CEA), which in the first line include the Department of Justice, Tax Administrations, Control-Audit Departments, Inspections of the State Committee on Architecture-Construction Control, Representations of the State Committee on Issues of Regulatory Policy and Enterprising, Anti-monopoly Committee, etc.

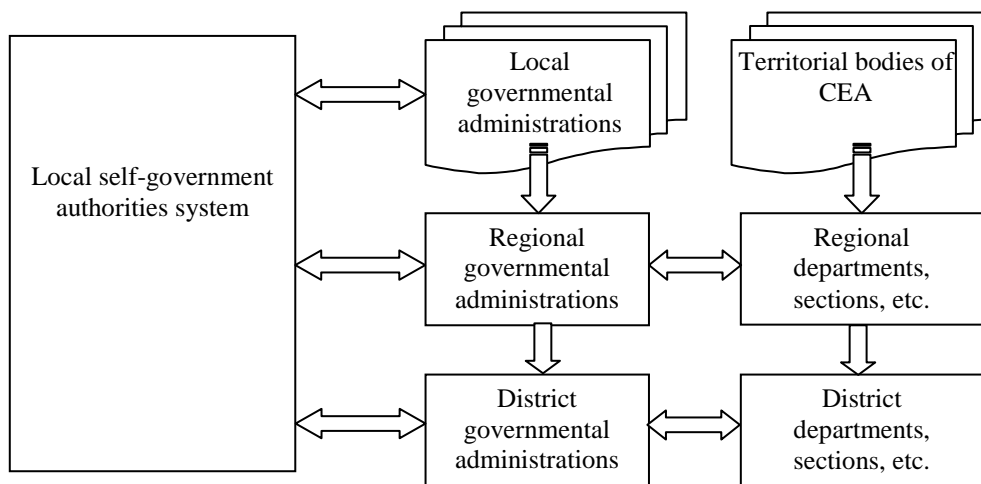


Figure 1: Simplified layout of the territorial organization of the Ukrainian authorities

Interaction of the above executive authorities in a territory is carried out as follows: heads of governmental administrations coordinate the activity of CEA territorial bodies and promote execution of the tasks they have been given; on issues of execution of the authorities of local governmental administrations by the latter – the heads of CEA territorial bodies are subject and subordinate to the heads of the respective local governmental administrations.

Generalization of the studies, devoted to evolution of the Ukrainian local self-government, makes it possible to distinguish the following historical stages of its development [3; 4].

Origination of the local self-government rudiments was observed in the 10th-18th centuries: in time of Kyivska Rus – popular assembly administration; as being the member of the Grand Duchy of Lithuania – Voit system (old temporal administration, castle administration, Magdeburg law); as Ukrainian Cossack state (regiment-squadron system), which may point out the launch of the Ukrainian local self-government's formation. During the 18th-20th centuries there formed the commandant system (administrative supervision from the side of the commandants as appointed by Russia) at first, and then – the local administration; rural community; assembly of the land system. In the course of 20s-90s of the 20th century the local self-government functioned as the unified Soviet system of People's Deputy Councils, which had the status of the governmental authorities.

The self-government regeneration process in independent Ukraine started on December 7, 1990, when they adopted the Law of the Ukrainian SSR "On Local Councils of People's Deputies of the Ukrainian SSR and Local Self-Government", which defined the local self-government as the territorial self-organization of citizens

for independent solution of all the issues of local life, directly or through governmental authorities, being elected by citizens, in terms of the population's interests, at the virtue of laws of Ukraine and the own financial-economic base [8].

Constitution of Ukraine dated 28.06.1996 has established the principles of the local self-government, stating that it is recognized and guaranteed in Ukraine, and has specified the essence and arrangements of the local self-government, which implies to the right of the territorial community – community of villagers or voluntary union of several villages into a single rural community, community of the settlement or of the city – to solve the issues of local significance independently, within the bounds of the *Constitution* and the laws of Ukraine [9].

The said determination is in principle different from the definition as announced in May 1990 in the *European Charter on Local Self-Regulation* (in the part suggesting the exercise of the right granted to the territorial community as regards solving the objectives of its own development), which construes the self-government not only as a right, but also as a real capability for the self-government to regulate a considerable amount of local business and manage it, acting within the bounds of the law, under its liability and for the benefit of the local inhabitants [5].

The Law of Ukraine “On Local Self-Government in Ukraine” dated 21.05.1997 has provided the definition of the local self-government, being guided by the *European Charter*, as the right granted by the state and the real capability of the territorial community – community of villagers or voluntary union of several villages into a single rural community, community of the settlement or of the city – to solve the issues of local significance independently and under the liability of bodies and officials of the self-government authorities, within the Constitution and the laws of Ukraine [6]. The above law has specified the composition of the local self-government system, principles, organizational-legal, material and financial grounds for its operation. The local self-government system's composition of Ukraine is below in the Figure 2.

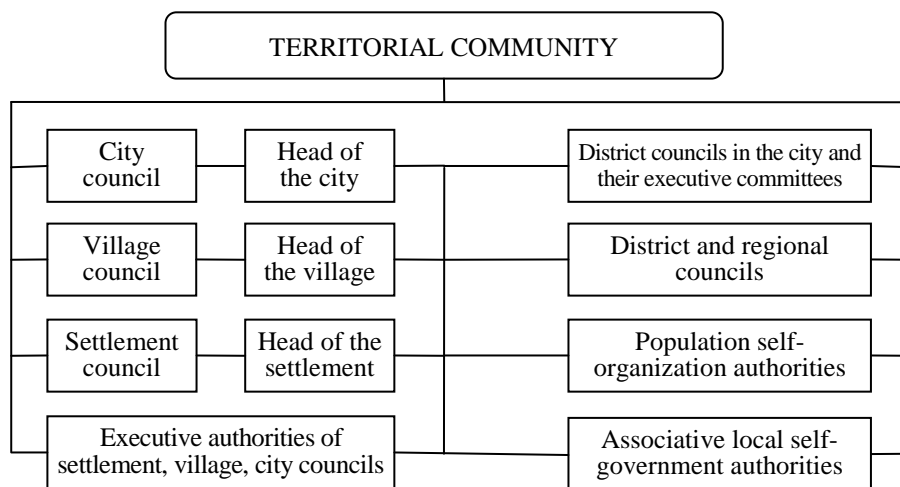


Figure 2: Composition of the self-government system in Ukraine

Powers of local self-government received further specification in other legislative acts of general and special actions, including Budget, Civil, Economic Codes of Ukraine, Laws "On Elections of Deputies of Local Radas and Rural, Village, City Heads", "On the Organs of Self-Organization of Population, "On Status of Deputies of Local Radas", "On Election of Deputies of the Autonomous Republic of Crimea, Local Radas and Rural, Village, City Heads", "On Service in the Organs of Local Self-Government" and many others that make up the legal framework of local self-government functioning in Ukraine, formation of which is not completed yet.

Powers of organs of local self-government (OLSG), which are recognized by the competence of territorial communities, are their own powers, the main financial source of which is local budgets. While executing these powers, OLSG operate independently and are not subordinate to the structures of state executive power. However, control is inherent to the sphere of the delegated powers when the state according to the law entrusts organs of local self-government with implementation of state functions which must be financed by the state budget means, or by assigning certain national taxes to the appropriate local budget, or to be accompanied by the transition of the objects of state property which are not kept well today and is one of the main problems.

Within the framework of existing model of territorial organization of power local self-government system is considered according to the norms laid down in the *Universal Declaration on Local Self-Government* and the *European Charter on Local Self-Government* [2; 5]. This concept assumes the presence of common powers of state administration and local self-government, which must be separated. Partially this has been done in Ukraine, however there is no clear differentiation of such powers yet. They coincide in the spheres of economy and finance, social, architecture and construction, organizational work, information provision and others. Herein lies one of features of functioning of local self-government system in Ukraine. Absence of clear differentiation of powers, the lack of coordination of competence of local state administrations and organs of local self-government results more frequently in duplication of activity, emergence of disputes between the representatives of state administration and local self-government. It seems possible to solve them only on a contractual basis in relation to constructive collaboration.

Another feature is also related to the action of external (exogenous) factors regarding local self-government – the activity of local self-government in the conditions of the centralized budgetary system. In recent years there has been a prevailing tendency, which has a negative connotation for local self-government, systematic reduction of budgetary funds remain at the disposal of local self-government. However, the *European Charter of Local Self-Government* stipulates that the organs of local self-government are to be provided with financial resources according to their competence under the Constitution and laws, while part of such resources should be formed by local taxes and charges [5, Art. 9].

Meanwhile, despite the fact that the absolute amount of incomes of local budgets grows annually, however it does not mean reduction of needs of organs of local self-government in financial resources to provide vital functions of local communities and their development. Vice versa, deceleration of income growth of local budgets became

the tendency of 2008-2009. At the same time, the evidence of influence increase of local self-government organs on the development of appropriate territory is the growth of share of local budgets in the consolidated budget of Ukraine, which tends to increase, although still remains quite low and does not exceed 30%.

There is a problem of financial compensation to ensure the minimum resources of local budgets. Share of transfers in total local budget revenues ranges from 70 to 20%, which does not contribute to the financial independence of local government. The existing approach to determining the volume of budgetary financing from local budgets for social and cultural programs and other measures by direct payments according to each type of budgetary institutions on the basis of network, staff and contingent receivers of budgetary funds is opaque and unpredictable. Such financing deprives local authorities of the possibility at the appropriate level to perform its functions, the volume of which, on the contrary, tends to increase.

One can select the whole group of features related to the necessity of further improvement of local self-government system, i. e. caused by the action of internal (endogenous) factors. It is a common knowledge that in Ukraine it is formed by groups of such elements: communities, organs of local self-government which they form (representative and executive); institution of village, town and city mayors, organs of self-organization of population; associative unions of organs of local self-governments (see Figure 2). Relations between local self-government organs also belong to the horizontal ones as they have no subordination, although there is a set of facts that show the actual subordination of the district radas to regional ones, village, town, city, towns of district importance to the district radas. This stipulates the necessity of improvement of interaction mechanism of local self-government organs in inter-budgetary relation formation, communal property management, realization of common interests of local communities, the delegation of authority and others.

Organs of local self-government are intended to defend and implement interests of individual local communities (villages, towns, cities) and their common interests (at district and regional levels). Thus relationship of local state administrations with regional and district radas are based on such provisions/regulations.

District and regional radas delegate corresponding local state administrations powers to execute administrative functions that should be accompanied by transfer of financial, logistical and other resources necessary for their implementation, thus local state administrations become accountable to and under control of corresponding radas as far as the delegated powers are concerned.

Regional and district radas do not influence the appointment of heads of local state administrations, but they can initiate their resignation: to express distrust to the head of the respective local state administration, on the basis of which, taking into account the suggestions of organ of executive power of higher level, the President of Ukraine approves the decision and gives a reasonable response to the corresponding Rada and in the case if distrust to the head of the regional or district state administration was expressed by two-thirds of the relevant rada, he accepts the resignation.

Heads of local administrations can bring in for consideration of the corresponding radas the issues related to execution of delegated powers, and other suggestions and

have the right to advisory vote at meetings of the respective radas, they shall report annually to the respective radas on budget fulfillment, programs of economic, social and cultural development of territories, and delegated powers.

This means that the real executive power in the districts, regions and in the cities of Kyiv and Sevastopol is exercised by the state administration, that means that both public and representative organs perform administrative functions, thus importance of local self-government in the management of territorial development, particularly in the issues of social services, especially health care, has increased recently.

Relations between the local executive authorities and local governments belong to the horizontal ones, as they are based on the principle of interaction, but in practice it is not fully adhered to, which leads to conflicts between elected heads of organs of local self-government and appointed heads of local state administrations.

Identification of relationship of local self-government organs of cities of regional importance and district centers with territorial representation DCTR shows that in this context there are also problematic issues, one of which - the lack of legal basis and mechanism of influence of mayor as a key public servant of the local community on RCTR units in such administrative units that becomes an obstacle to implement certain innovations in the mechanism of administrative services, such as issuing permits to business entities.

Distinction of the organs self-organization, which are formed with the permission of local radas on the initiative of residents of houses, streets, quarters, neighborhoods, small towns and villages is the possibility to manage their own affairs relatively independently from the authorities. The legal status of organs of self-organisation of population is defined by the *Constitution* and laws of Ukraine "On Local Self-Government in Ukraine" and "On the Organs of Self-Organization of Population " which give them very broad powers. However, the extent of their participation in matters of local importance, primarily related to the implementation of measures for environmental protection, work on improvement, and landscaping and maintenance of the yards, streets, parks, arrangement of playgrounds and clubs of special interest, etc. is very limited today (even compared to the end of 80s). The reasons of still low activity of these above mentioned civil society institutions lie in difficulties of their relations with the representative and executive bodies of local self-government, which is caused on the one hand, by the fact that authorities underestimate the initiatives of self-organisation organs, and on the other hand by incomplete perception of the public specifics of administrative activity. To prevent possible misunderstandings about this one can contribute to the dialogue between them, study public opinion, transfer responsibility for providing certain services from authorities to the organs of self-organization of population, attracting public organizations leaders to work together with organs of local self-government in the development, for example, of strategic plans, the implementation of regulatory policy etc.

Key features of the functioning of separate elements in the composition of local self-government organs of the definite territory and in general the system of itself local self-government in the city must be recorded in the Regulations of communities, the practice of their acceptance has been spread in course of time.

As to activity of associative unions of local self-government organs, of which there are almost 50 in Ukraine, in our opinion, the most active and effective of these is the

Ukrainian Association of Local and Regional Authorities, the Association of Ukraine's cities and communities, and others. Thus, the latter one combines more than 350 cities, takes part in processing of practically all laws relating to local self-government, including the *Budget Code*, and defends the interests of the territories. But they have not become the moving force in political and socio-economic life of the administrative-territorial formations, consolidation of their efforts to regional development yet.

Globalization processes, which now occur in the world, create new conditions of social and economic systems, demand from the authorities to search for new methods of management of territorial development. One should bear in mind that the global problems affect not only the world in the whole, but appear at the level of regions and even individual countries. In scientific literature, along with underlining universal importance, attention is focused on their differences from private, local, regional issues, which essence is different, but sphere of influence is much narrower [11]. Global tendencies of decentralization deepening, spread of self-government as manifestation of direct democracy, orientation at own self-development, without expectation of assistance reflect the importance of local self-government in realization of administration in modern countries, including Ukraine. There are several concepts of decentralization, which can be manifested in various forms and combinations: political one gives citizens and representatives whom they elect to the authorities, powers of decision making in the sphere of public administration and local self-government; administrative one consists of reallocation, delegation and devolution of powers between levels of government and administration; economic one is the transfer of responsibility for implementation of state functions to private enterprises and NGOs (through privatization and deregulation); financial one is clear fixation of relevant revenue sources or transfers from the state budget to local budgets to provide for execution of personal and delegated authority by local self-government organs [12, p. 48].

European *Charter of Local Self-Government*, ratified by Verkhovna Rada of Ukraine in full in 1997, proclaims the right of local self-government organs to possess sufficient own funds, which they can dispose of while realizing their functions. The *Charter* formulates the basic principles of local self-government realization, the essence of which can be shown as follows: the organs of local self-government is one of the pillars of any democratic society; the right of citizens to participate in public affairs is one of the common democratic principles for all countries-members of the European Council; the right of citizens to participate in public affairs can be realized directly at the local level; the existence of endowed with real authority local self-government organs provides effective, and at the same time close to a citizen administration, protection and strengthening local self-government in various European countries represent the significant contribution to building of Europe which is based on the principles of democracy and decentralization of power, the existence of local self-government organs that possess competent decision-making bodies created by democratic means, and which have broad autonomy as for their competence, the procedure of its implementation and the necessary means [5].

However, the mentioned principles have not been fully reflected in the current regulatory and legal framework of local self-government, its organizational and

functional forms, first of all at the regional level, because the *Charter* proclaims that determined in it “principles of local self-government are applied to all categories of local authorities, existing within the territory” of the country which has signed it [5, Art. 13], the formulation of mechanisms for interaction with state authorities.

Such clarity in the Ukrainian legislation on similar issues is absent today that often leads to rather free interpretations of the delegated powers, the emergence of misunderstanding between local executive organs and organs of local self-government, the overall reduction in efficiency of territorial development administration of individual settlements. However, the process of forming of the legal framework of the territorial power organization, its institutional design continues.

2. Administrative and territorial division as the basis of the organization of local self-government organs system

In Ukraine, local self-government is executed at the level of administrative and territorial units. According to the *Constitution of Ukraine* the system of administrative-territorial structure of Ukraine consists of the Autonomous Republic of Crimea (ARC), oblasts, districts, cities, districts in cities, towns and villages [9, art. 133].

The system of administrative-territorial division of Ukraine, which was composed in the 30's and 60's of the twentieth century in the conditions of centralized control, has many significant defects, which affect the administration, as considerable part of the self-governing territories are devoid of real resources necessary to implement the functions of vital activity and development provision. The main drawbacks are the following:

a) structural overloading of administrative and territorial division (in fact, its four-level system: the first (regional) - ARC, regions, cities of Kyiv and Sevastopol, the second (local I or sub-regional) - districts and towns of republican (for ARC) and regional importance; third (local II) – towns of district importance, urban settlements, villages, fourth (local III) - areas in cities with district division, village and town radas (the latter are singled out as separate administrative and territorial units in accordance with order previously established by legislation). March 25, 2010 estimate in Ukraine there were one autonomous republic, 24 oblasts, 490 districts, 459 cities (including 2 cities with special status, 17 cities of regional importance, 280 towns of district importance), 118 districts in cities (26 cities with district division), 885 towns and 28,471 rural settlements (villages and towns 10,273 village radas), i. e. 29,815 settlements [1];

b) lack of proper regulation of legal status of administrative and territorial units at the legislative level, the actual existence of towns and village radas, which is not foreseen by the Constitution of Ukraine;

c) excessive fragmentation of settlements as administrative units because of the absence of clear criteria of settlement ascription to one or another type which causes some disparities in the population number, for example: in Kharkiv there are 1 million 465 thousand people, in Artemivsk (Donetsk region) there are 10 thousand people, in city of Ustilug (Volyn region) there are 2.8 thousand people, and in settlement of Nova Vodolaga (Kharkiv region) there are 10 thousand people, Kharkiv region of

Kharkiv oblast – the biggest rural region - has population of about 200 thousand people, and Kolomaksky district (also in Kharkiv oblast) has only 8.2 thousand people. Thus legislation does not provide differentiation of functions and tasks of local self-government organs, depending on the number of members of the local community, although, of course, the available resources of settlements are different;

d) lack of coordination of administrative and territorial division with local self-government organs, designated by the Law of Ukraine "On Local Self-Government in Ukraine", especially with the definition of the local community, for example, which leads to the location within the territory of a city other towns and villages as separate administrative and territorial units (now 64 cities of regional significance include 202 other administrative and territorial units with their own organs of local self-government, for example the city of Yalta in the Crimea comprises 31 settlements - 1 town of district importance, 21 villages of urban type, 8 towns, 1 village and the system of local self-government has 1 City Rada and 7 town radas).

The existing administrative-territorial division of Ukraine is irrational, it actually causes imperfect functioning of local self-government system and territorial organization of power in general: powers of public authorities at various levels of administrative-territorial structure overlap, which cause conflicts between self-government organs and local state administrations, the possibilities of full and clear delimitation of power between the organs of self-government and local organs of executive power as well as between organs of self-government of administrative and territorial units of various types and levels are absent, which reduces the efficiency of administration, land relations are constrained by the availability of land with uncertain jurisdiction because of the inconsistency of administrative-territorial system with the system of local self-government; budget transfers imperfection stipulates the subjectivity of their distribution and unevenness of formation of budgetary institutions network in the cities of district importance and rural settlements, its degradation and, consequently, the accelerated migration of rural population; the investment attractiveness of areas decreases due to tangled system of administrative relations.

Concluding remarks

The problem of territorial organization of power in Ukraine is becoming more and more topical that is connected with its basing on considerable heterogeneity of administrative and territorial units of the country, significant multistructural properties, vagueness of relations between executive public authorities and organs of local self-government, complication of subject-object relations in administration of territorial development.

Profound analysis of the system of territorial organs of executive power and self-government in Ukraine made it possible to make the conclusion that it has a rather bulky structure in which the problem is effective administration because of the specific features of its functioning caused by such factors as: imperfection of legislation (unsolved problems of the administrative and territorial system, absence of clear distribution of functions and powers between some organs of public authorities (state administration and local self-government) and its territorial levels, instability of

budgetary legislation and so on), absence of the proper resource provision of administration of territories (lack of theoretical and methodological grounds and component meaningfulness of administration of territorial development, insufficient competence of personnel at a local level, limited material and financial base, inadequate informatization and so on), substantial weight of the command and administrative influences in the spectrum of administrative methods due to keeping in most officials' consciousness some stereotypes of the past how to realize power.

The problem of power disintegrity, contentious and competitive relations between local public authorities and organs of local self-government is the reality which is necessary to consider. Thus there is a great necessity to find consensus, concordance of interests for the sake of mutual ultimate goal which is the prosperity of territories, growth of people' welfare.

It grounds the necessity of subsequent research of the problems connected with the degree of centralization and decentralization of power, its clear distribution between the levels of executive power by unloading central organs from the functions of operative administration and strengthening their functional orientation for the development of strategic actions to solve the problems of national value; between local public authorities and organs of local self-government with the purpose of approaching public and social services closer to customers; by creating conditions for involvement of entrepreneurial and nongovernmental organizations into the granting of such services, establishing partner relations on the basis of interests balance and limited interference with their economic activity; by forming economically successful territorial communities; by modernization of legal base and modification of organizational structure of local self-government; introduction of mechanisms of financial territorial particularism; by involving citizens in the solving of local problems and simultaneously improving spatial bases of power in Ukraine. Moreover, Ukraine, oriented on European integration, faces the necessity of not only organizational improvement of local authorities and local self-government but also concordance of the system of the administrative and territorial system with the legislation of European Union. Only strong self-government can allow local authorities to more effectively use such instruments of territorial development as creation of European regions, agencies of regional development, regional and interregional clusters, co-financing of realization of the state territorial interests by making agreement with central public authorities as for regional development and so on.

The mentioned and other shortcomings of the administrative and territorial system of Ukraine lead to the situation when authority of local self-government and its resource provision are not adequate, that does not allow to effectively realize the principles of local self-government set in the European Charter. Stable development of a territory is impossible without the improvement of territorial organization of power that is directly connected with reformation of the administrative and territorial system of the country.

Thus, it is possible to define some priorities of subsequent development of local self-government: carrying out administrative and territorial reform and transformation of territorial organization of power in whole and systems of local self-government in particular (liquidation of local state administrations, creation of executive branches of district and regional councils, redistribution of plenary powers at different levels of

administrative and territorial units, etc.); reformation of local budgets (expansion of profitable base of local budgets, strengthening of the role of local taxes and charges, improvement of the system of forming of state-financed organizations network and personnel; introducing the system of the financial balancing and transfers on the basis of transparency and objective criteria and so on).

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Vietos savivalda Ukrainos valdžios teritorinėje struktūroje: problemos ir vystymo prioritetai

Santrauka

Straipsnyje analizuojamos Ukrainos vietos savivaldos teritorinėje valdymo sistemoje problemos ir aptariami jos vystymo prioritetai. Temos aktualumas motyvuojamas tuo, kad reikia plėtoti demokratinius principais grindžiamą Ukrainos valstybingumą, siekiant, kad vietos savivaldos ir valstybės valdymo formos sudarytų galimybę plėtoti Europos standartus atitinkantį teritorinio valdymo modelį, užtikrinantį piliečių teises, laisves ir teisėtus interesus. Akcentuojama, kad toliau plėtojant vietos savivaldą būtina reformuoti šalies administracinę teritorinę sistemą, persikirstant savivaldos ir teritorinių valstybės administracijų funkcijas ir keičiant vietos biudžetų formavimo sistemą.

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