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## The positive and negative consequences of the local self-government development in Ukraine in the context of European experience

*The article concedes the basic models of the local self-government (horizontal or continental and dualistic or Anglo-Saxon), which are classical on the European space. Positive and negative consequences of the local self-government system development in Ukraine are analyzed in this article.*

**Key words:** local self-government, mass, state power, municipalities, territorial formations, management, separatism.

**Ключові слова:** місцеве самоврядування, громада, державна влада, муніципалітети, територіальні утворення, управління, сепаратизм.

*В статті розглядаються основні моделі місцевого самоврядування (горизонтальна або континентальна і дуалістична або англосаксонська), які є класичними на європейському просторі. Аналізуються позитивні і негативні наслідки розвитку системи місцевого самоврядування в Україні.*

**Ключевые слова:** местное самоуправление, громада, государственная власть, муниципалитеты, территориальные образования, управление, сепаратизм.

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The improving of the efficiency of the participation of the masses in the administrative process always was and is an actual problem of the socio-political development of any society. The purpose of the article is to analyze the classic experience of developed countries and its creative implementation into the Ukrainian political realities.

In the domestic political science L. Dunayeva, A. Yevtushenko, Y. Krestyleva, A. Lebedynska, K. Michaylovska, A. Nekryach, A. Nikolayev, A. Osipov, D. Spivak, O. Yatsunska and others paid much attention to this problem. But there are no practical reasons to consider it solved, that is why it still remains in the circle of view of scholars and politicians. The analysis of the foreign experience and its creative implementation into the political practice of the post-Soviet countries, including Ukraine, are the theoretical and practical problems of the modern social and political development.

In the states of continental Europe a system of local government has developed, a feature of which is the "withdrawal" of the formed there public authorities from the communities (the disqualification of the creativity forming, the converting of the local jurisdiction into the function of the government, the availability of the care from the part of government officials, and soon). This system is widely spread through the colonial expansion of France and Germany. But, within the frames of the local government system the municipalities play an important role in the political life of a country, in the decisions of the administrative and legal nature problems within their respective territorial entities.

The most important principle of the organization and activities of the municipalities apply their subordination and accountability to the local populations.

History shows that municipalities have always been the basis of the central government in the fight against the feudal separatism, and the state American people increased on this base. The democratic forces have always seemed to be in the municipal autonomy as opposed to various separatist aspirations of the extremist forces. The formation of a centralized state always meant more «movement» to the center from the public authorities features communities (sometimes by force), the transformation of the communities into the territorial groups those were supposed to ensure the implementation of the legal guidance center. "The rest" of the public authorities in local government, their accountability to the central government determined and still determine the degree of the self-government democracy and its autonomy.

The continental model is based on the theory of state government, the essence of which lies in that the local government organs are the state authorities' organs, and their competence is not particularly original and natural but is entirely created and regulated by the state. The self-government – in such a case – is a kind of public administration.

It is believed that the horizontal (or continental) model has become wider at present in the process of the local authorities development. This model is the basis of the self-government systems of the most European countries, French-speaking countries of Africa, some counties of Latin America, and mostly of the post-socialist countries. The dual (Anglo-Saxon) model corresponds to the oldest system of the self-government, which is different from the other systems of the local government, because of the historical patterns of its development. In the modern conditions it has received the considerable spread in the «resettlement» countries and the countries those were the part

of the British colonial system, within which there was the introduction of this model or a substantial part of its elements. According to K. Michaylovska, the borrowing of other model elements (the sample) into the own national system leads to the hybridization of the system and to the separation of the other «mixed» model, which also became model-creating image system. The mixed model with the dominant mixing of the continental model elements is different from the mixed model with dominant mixed Anglo-Saxon model with a higher degree of force centralization, the presence of so-called administrative vertical. The difference also lies in the conjunction of the self-government with the direct public administration on the grounds those exercise the state supervision over the self-governments, it allows to do whatever is not prohibited by the law. The most widely the mixed model acquires in Germany, Austria, Japan and the others, and its hybrids exist in most countries of the world [1, p. 88].

In science there is also the definition of self-government, based on the continental European concept. This way, the supporters of the Anglo-Saxon and the European continental concepts often use the same terms: “power”; “Public authority”; “Control”; “Activity”, based by the citizens residing within the municipality forming; “Local issues”; “The interests of the local populations” and soon. But, at the same time they believe that the self-government is a continuation or the public administration, or it is the State management employing by the local residents within the municipality forming.

The supporters of the European continental model based on the theory of the state self-government, believe that the state power is inextricably linked with the self-government by the presence of the general functions, the combination of the national and local interests in the solving of the problems of local significance, achievement of a common goal – improving the welfare of citizens.

In its turn, the supporters of the Anglo-Saxon model exclude the self-government's participation in the implementing of the public functions and believe that the state authorities cannot interfere in the affairs of local importance. It should be noted that the Anglo-Saxon model cannot actually be implemented in Ukraine. It is designed for the more economically developed countries.

The essence of understanding of the local self-government, which is based on the European continental model, lies in that the self-government is seen as a local public authorities set by the state. It is realized on the territory of the municipality by control exercised by the residents living within that municipality, bodies and officials of local government. However, to carry out its functions the local self-government has a real material-financial base.

In this understanding of the local self-government there are combined a lot of elements of superstructure

and basic relationships those are in close connections. The local self-government is carried out by management. Such way, there is a set of administrative relations, acting as a category that ensures the communication and interaction between the basis and the superstructure, the managed and the managing systems. It should be stressed that in this definition of the term of self-government also there are reflected its main features.

– It's a kind of public power set by the public authorities in law. Thus, the introduction of the local self-government in the society depends on the public authorities taking laws. The current nature of the local self-government lies in that, from the one side, it is an analogue of the central government, and from the other side – it is a form of democracy that ensures the realization of the citizens right of the local government, and it allows the local population to transform their will into the public power.

– The availability of the public authority, enshrined in law by the citizens, gives them the opportunity to manage a significant part of the public affairs, to implement the public functions within the frames of the respective municipality.

– The frames of the power for citizens, for the bodies of the local self-government and for the officials of local self-government confined to the territory of the municipality forming. The whole decisions made while the implementation of the various forms of local self-government, act only within the frames of this municipality.

– The public municipal power belongs to the citizens and realizes directly by them through the local self-government, created by them, or through the officials of the local self-government.

– This power stured by the law and should be realized within the frames of the law. This underlines that the local self-government is based on the current law, but within the feasibility or any other conditions.

– The local government as a form of the public authority has an adequate material and financial base in the form of municipal property, local budget, securities, and so on. This power takes decisions and is responsible for its actions by its property.

– While the acting of the local self-government the local and national interests are united [2].

Talking about the definition based on the Anglo-Saxon concept, in this definition it is enough to replace the term “the solving of significant part of public tasks» with the term «the solving of the tasks of local importance”.

For the definition of the term of the local self-government, based on a combination of two basic concepts it is necessary to indicate the combination of the state and the local importance tasks. Thus, along with the state public power the municipal public power exists.

The European Charter of 1985 year about the local self-government is used to be considered as the mod-

ern international-legal instrument that teaches concepts and principles of local self-government best of all. According to the official version of the Charter, the local self-government means the right and possibility of the local self-governmental bodies to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of local people within the frames of law. This right is exercised by the councils or assemblies the members of which are elected by secret ballot on the basis of direct, equal, universal suffrage, and who may have the executive bodies accountable to them. This provision in any way doesn't affect the recourse to assemblies of citizens, referendums or any other form of direct citizen participation if it is not permitted by the law [3].

It is not hard to find the breach of logic in this definition: the concept is defined by itself – the local self-government through the local self-governmental bodies. However, it should be noticed, that this logical inconsistency is found in the translated text. The Primary Sources of the Charter are the authentic texts in French and English. Based on the name of the Charter, “the local self-government” is the English translation of “the local self-government” and French “Tautonomie locale”. The words set out in the definition, translated into Ukrainian with the meaning as “the local governments” in the French version sound as “collectivites locales”, and in English – “the local authorities”. Along with this translation, they can also be translated with the words “the local authorities”, “the local power”, “the power of the local area”. Thus, in this case it is not much said about the institutions, but about the local population, implemented with the goal to join the authority power to protect the interest, due mainly by the factor residence in a particular, isolated (local) area, i.e. about the population as a subject of power. In connection with that to use the translation for the concept of “local community” as “the local authorities” and “collectivities locales” is more appropriate.

In this definition the term of autonomy is crucial important. The autonomy of local self-government denotes as the municipality population's right to define a range of issues admitted to its conducting and to solve them directly or through their representatives in accordance with the applicable law without any other power structures interference.

The definitions set out in the European Charter emphasize another important aspect of the local self-government – it is the activities under the responsibility. That is, the consequences burden for the decisions taken within the matters in its conducts fully falls on the local self-government.

The local municipal authorities, with the governmental bodies, should manage both state and local affairs, based not only on the local interests, characteristics and traditions but on the state interests. This local governance should be based on law. Then the

unity in the management of the whole country will be achieved and the gap between society and the public authorities will bridge.

The local self-government is enshrined and guaranteed in the constitutions of modern states as the one of the foundations of the governance democratic system. The term of “local self-government” reflects the complex and diverse phenomenon, the formation and development of which depends on a complex of historical, geographical, political, economical and other features of the area. It more completely allows realizing of the statement about the population is the only one source of power.

In the most civilized countries in large administrative units within their constituent territories until the grass-roots level (small towns, villages, wards, communes and so on) the public authorities realize not by the public authorities but by the local population directly or bodies formed by them (the officials) [4, p. 82].

This power gets the properties of self-organized public authority exercising the managerial functions legally recognized and secured by the central government. Therefore, in the local self-government the parliamentary principle of separation from the law-making is almost impossible. That is why in the legislation of the developed countries the foreign municipalities enshrined as the corporations of public law, i.e. the institutions which own the rights of public institutions (the subject of administrative-legal relations) and the legal personalities (US, UK, etc.). In this capacity of the municipal forming its political-legal nature appears as an organization of the public authority in the fields. Although the conditions of genesis, historical development and evolution of this institution were different in the respective countries, their political and legal nature and function in general were the same. For example, the historical role of the German local self-government in the state's history is fundamentally different from the influence of the English local self-government on the formation of form of government in the UK. However, at this time these bodies carry out the same functions and the same tasks, providing the livelihood of the local communities populations based on the laws and other regulations of state bodies and their own legal decisions taken within its competence.

The local territorial self-government is directly related to the problems of democracy in the country. The state, being the spokesman of the common interest of the population, ensures the implementation of the interest, particularly in the form of law. The implementation of laws is made by the relevant bodies, including the bodies of the population of cities, districts and other settlements. The last ones combine this activity with the specific interests of the local populations. In fact, the population may be the main subject of this public activity [5, p. 6]. Thus, the local pop-

ulation can become the main subject of managerial, administrative-legal relations, which is the first feature of municipal management.

The second feature of the municipal management stems from the first one. The public-legal nature of the local self-government determines not only by the decentralization of the public power, but also by the organization of the state power in general, which is more significant problem. The local government should be functionally quite effective. The legislation about the local government is called to play a special role in this matter. At this stage of the local government forming the political activity of the population and its self-organization must be sufficiently high. It is known, that the government is impossible without the legal institutions, without the corresponding local self-government organs and officials and without the organizational activities of the deputies of the municipalities representative bodies [6, p. 255].

The initial theoretical and methodological basis of the forming of the public power, including the self-governing power, in Ukraine is the communicably and natural-law concept of power and self-government. These ideas humanize the public authority, make it closer to the citizens, and their implementation significantly expands the sphere of freedom of the individual, his social actions, forming a significant segment of his social interaction with the state, in the result of which the individual and collective rights of the individual are optimally implemented. In such the conditions the authorities reflect not only the specific way of thinking and the way its implementation of the will of the specific person, group of people to the life and the life of their children. Through such bodies the complete system of the social relations will be composed and functioning at the local level, what actually form a real civil society.

The borrowing of the experience from different self-governmental systems which are recognized model-creating (exemplar) has violated the logic of the self-government national model, as an integrated, system-related with the institutions of the state, and with the political culture of the population. The variability of the legislator in the determining of the local self-governments became a problem, which led to the fixing of "Community" theory of the self-government in the Constitution of Ukraine of 1996 year and the

«state» theory of the government in the relevant law. In practice, it has led to a combination of elements from different models of self-government that has led to the hybridization of the Ukrainian system of local self-government, and further to its ineffectiveness in the solving of the local problems.

The administrative reform due the increasing of the efficiency and improving of the governance system there are proposed the constitutional changes, which are, unfortunately, still superficial, unsystematic and unable to restore the structural balance between the public administration and the local self-government.

Thus, the local self-government is an independent activity of citizens for the regulation, management and resolution of the considerable part of local issues in the interests of the population of the area with the development of society directly or through the formed local self-government organs.

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