

## КОНСТИТУЦІЙНЕ ПРАВО; МУНІЦИПАЛЬНЕ ПРАВО

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### CITY CHARTERS AS THE LOCAL CONSTITUTIONS

The statutes of territorial communities of cities have become more and more common subject of research of scientists in Ukraine since the processes of decentralization of public power became actualized and became more intensive. A number of scholars call these statutes "local constitutions".

The article deals with the comparative analysis of the formal and essential characteristics of the city charters and constitutions. The aim of the comparison was to evaluate, if it is correct to write about the city charters as about the local constitutions, municipal constitutions etc.

If we compare the formal features of the constitutions and statutes of territorial communities, it is noteworthy that only one of them is similar – the legal technique used in writing the text of the Basic Law can be used in writing the statutes of territorial communities. It is implied that the text of the constitutions is written in very simple language so that it is clear to ordinary citizens that "attention" should be focused on the maximum use of simple and clear terms, fixing the avoidance of excessive use of special technical terminology; non-use of obsolete and underused terms; professionalisms, neologisms, analysis of the text of the normative legal act for the presence of overloading the text with foreign terms, promoting unity, uniformity of use of legal terminology.

Consideration of both substantive and formal features of the statutes of territorial communities in comparison with similar features of the Basic Laws gives grounds to state almost complete lack of similarity between these acts. Certain analogies can be made only in relation to the structure of these acts, and sometimes a similar legal technique is used in their writing. An important common feature is the desire to express in the constitutions – national identity, and in the statutes of territorial communities of cities – historical, national-cultural, socio-economic and other features of the urban community. Thus, to call the statutes of territorial communities of cities "local constitutions", as is often the case in the literature, is hardly fair. Prospects for further research in this direction are a deeper analysis of the nature and legal nature of the statutes of territorial communities of cities.

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

#### **Ідесіс І. В. СТАТУТИ ТЕРИТОРІАЛЬНИХ ГРОМАД МІСТ ЯК МІСЦЕВІ КОНСТИТУЦІЇ**

Статути територіальних громад міст стають все більш і більш поширеним предметом дослідження науковців в Україні з того часу, як актуалізувались та стали більш інтенсивними процеси децентралізації публічної влади. Низка вчених іменує ці статути «місцевими конституціями».

Статтю присвячено порівняльному аналізу формальних та змістових ознак статутів територіальних громад міст та конституцій. Актуальність статті зумовлена необхідністю з'ясувати коректність застосування для цих статутів назв «місцева конституція», «локальна конституція» та аналогічних.

Аналізуючи змістові ознаки конституцій та муніципальних статутів, слід зупинитись на їхніх подібних рисах.

По-перше, за структурою статути територіальних громад аналогічні конституціям. Як правило, вони починаються з преамбули.

По-друге, якщо конституції виступають як «правове обличчя» держави, маючи в собі основну інформацію про державу з юридичної точки зору, підкреслюють національну ідентичність, то аналогічні норми існують і в муніципальних статутах. Тільки це особливості різного рівня.

У цілому ж розгляд як змістових, так і формальних ознак статутів територіальних громад у порівнянні з аналогічними ознаками Основних законів надає підстави констатувати майже повну відсутність подібності між цими актами. Певні аналогії можна провести лише по відношенню до структури цих актів, а також інколи під час їх написання використовується аналогічна юридична техніка. Важливою спільною рисою є прагнення до вираження в конституціях національної ідентичності, а у статутах територіальних громад міст – історичних, національно-культурних, соціально-економічних та інших особливостей міської громади. Отже, іменувати статути територіальних громад міст «місцевими конституціями», як це часто відбувається в літературі, навряд чи справедливо. Перспективи подальших досліджень у цьому напрямі полягають у більш глибокому аналізі питання сутності та правової природи статутів територіальних громад міст.

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

**Formulation of the problem.** The statutes of territorial communities of cities have become more and more common subject of research of scientists in Ukraine since the processes of decentralization of public power became actualized and became more intensive. A number of scholars call these statutes “local constitutions”, “municipal constitutions”, “mini-constitutions” [1].

Drawing analogies between the statutes of territorial communities of cities with constitutions may cause surprise or remarks, but nevertheless, given the growing importance of the statutes of territorial communities as sources of municipal law in Ukraine, an important scientific task is to compare these regulations to formulate proposals, which can be useful for those territorial communities of Ukrainian cities that need to adopt or update their statutes.

Law of May 21, 1997 “On Local Self-Government in Ukraine” in Art. 19 stipulates that “in order to take into account historical, national-cultural, socio-economic and other features of local self-government, a representative body of local self-government on the basis of the Constitution of Ukraine and within this Law may adopt the charter of territorial community of village, town, city”.

Thus, the problem is that the statutes of territorial communities of cities are a new source of municipal law for Ukraine. In this regard, conclusions and suggestions on them that are of practical importance are important for the further development of national municipal law.

**Research analysis.** Problems in the structure and content of the statutes of territorial communities were studied by B.C. Zhalsanov, N.O. Chudyk, O.S. Shugrina, and others. However, in the works of these authors, the analogies between the statutes of territorial communities and the constitutions of cities, even if they were made, were not substantiated.

**The purpose of the article** is to explore the possibility of calling the statutes of territorial communities of cities “local constitutions”, “city constitutions”, “local constitutions”, “mini-constitutions” and so on.

It is expedient to do this by comparing the constitutions and statutes of territorial communities.

First, we pay attention to the formal characteristics of the compared acts.

No researcher denies that the constitution has the highest legal force. As for the statutes of territorial communities, the charter of the territorial community of the city in Ukraine is approved by the decision of the city council – the representative body of the territorial community. Neither the Constitution of Ukraine nor the Law “On Local Self-Government in Ukraine” contains any remarks on the legal force of the statute, so it is logical to conclude that its legal force is the same as other acts of city councils.

It should be noted the connection between such features as higher legal force and the ability to act as a foundation of rule-making.

Municipal statutes are sometimes endowed with a similar feature. For example, O.S. Shugrina writes that “the statute is the basis for further rule-making” [2, p. 80–81]. However, it is important to keep in mind that it analyzes municipal statutes, which are characterized by higher legal force at the local level. Again, for Ukraine, this statement will still be untrue.

The next legal property of constitutions is direct action. Again, in Ukraine the issue of direct effect of the statutes of territorial communities at the legislative level has not been resolved. Also, there are no active scientific discussions on this issue. However, some foreign scholars who study the statutes as municipal acts, claim that the statutes of municipalities have a direct effect on the entire territory of the municipality, and sometimes state this fact as a presumption. Thus, B.C. Zhalsanov writes: “based on the recognition of the Statute as an act of direct effect on the territory of the municipality, we can agree with the possibility of its application in cases where there is no legal act to specify the Statute, as well as for interpretation norms of legal acts of local self-government. In this case, there is a similarity of the Statute to the Basic Law of the state” [3, p. 107]. The issue of the direct effect of the statutes is not central to this article, but it should be noted that it is unlikely that a bylaw would be considered an act of direct effect.

Some authors write that from a formal-legal point of view, the Constitution is the Basic Law, which has special guarantees of stability, which is manifested in the establishment of a special procedure for its adoption and amendment. Regarding the stability of the statutes, the view is expressed that “the charter of the municipality must have elements of stability” [4, p. 108]. But this is much easier to declare than to implement in practice, taking into account, firstly, the procedure for amending the statute of the territorial community, and secondly – its bylaw. It is hardly possible to talk about the stability of the content of the statute of the territorial community, if the municipal reform is currently underway in Ukraine, and the legislation on local self-government is constantly changing. The process of making changes and additions to Chapter XI of the Constitution of Ukraine “Local Self-Government” is also underway, which will affect the content of the charter of the territorial community of each city in the country and will require changes and additions to these acts.

Based on the norms of the Constitution of Ukraine, the territorial community of the city consists of the residents of the city. There is no special procedure for making changes and additions

to the charter of the territorial community, i.e. it is changed and supplemented by the current decision of the city council. It also does not add arguments in favor of the statement that the statutes of territorial communities, including territorial communities of cities, it is advisable to consider as “local constitutions”.

Instead, the Constitution of Ukraine is an act of the highest legal force, the Basic Law of the state. The current Constitution of 1996 was adopted by the Verkhovna Rada of Ukraine – the only legislative body of Ukraine. The Constitution is characterized by such a feature as stability, in connection with which amendments and additions to it are made in a special manner, detailed in Section XIII “Amendments to the Constitution of Ukraine”.

Concluding the comparison of the sign of stability and the processes of making changes and additions, we quote a well-known expert in the field of municipal law O.S. Shugrina that “like the constitution, the statute of the municipality is characterized by a special procedure for adoption and amendment” [2, p. 80–81]. It should be noted that the provision of such a feature to the statutes of territorial communities, including territorial communities of cities, would significantly increase their impact on local life in Ukraine. Then the charter would become “one of the legal means to ensure the implementation of local government independence” [5, p. 80–81]. Indeed, it is expedient to take the Basic Laws as a model – after all, the “Constitution” should be as closed as possible and practically inaccessible for renewal. The range of entities that have the right to make proposals for amendments and revision of the Constitution is narrowed compared to the range of entities that have the right of legislative initiative [6].

If we compare the formal features of the constitutions and statutes of territorial communities, it is noteworthy that only one of them is similar – the legal technique used in writing the text of the Basic Law can be used in writing the statutes of territorial communities. It is implied that the text of the constitutions is written in very simple language so that it is clear to ordinary citizens that “attention” should be focused on the maximum use of simple and clear terms, fixing the avoidance of excessive use of special technical terminology; non-use of obsolete and underused terms; professionalisms, neologisms, analysis of the text of the normative legal act for the presence of overloading the text with foreign terms, promoting unity, uniformity of use of legal terminology.

This brief review of the formal features of the constitutions and statutes of territorial communities suggests that there are a number of differences between these acts. However, scholars are still talking about “local constitutions” and so on. In

this regard, it is advisable to focus on the substantive characteristics of the constitutions and statutes of territorial communities.

The first is the need for constitutions and statutes in the legal system of the state, respectively, because lawmaking can be voluntary and mandatory. The Constitution is an act of compulsory law-making (only a few states do not currently have a written Basic Law). As for the statutes of territorial communities of cities, they are an act of voluntary lawmaking. So far, not all Ukrainian territorial communities of cities have their own statutes.

It is also important to note that the essence of constitutions and the essence of statutes in Ukraine do not coincide. We agree with it that in Ukraine the statute is logically presented as a legal act that regulates relations in the field of local self-government at the level of the territorial community, but it is hardly necessary to characterize this legal act as “basic” [5, p. 197].

So, the Constitution has both legal and political nature, which cannot be said about the charter of the territorial community.

Also, the analysis of the content of constitutions gives researchers reason to argue that it is constitutive. If we compare this constitutional feature with the feature of the statutes of territorial communities, including territorial communities of cities in Ukraine, it is not inherent in the latter; organizational and legal form of local self-government for territorial communities is enshrined in the Constitution and the Law “On Local Self-Government in Ukraine”.

It should be noted that in some works on municipal statutes there is a statement that the statute has a constitutive character. However, such a conclusion can be reached only in relation to those states that give members of the territorial community the opportunity to independently choose the organizational and legal form of municipal government and enshrine it in the statute (USA, UK, etc.). Accordingly, such municipal statutes are of a founding nature.

The subject of legal regulation of constitutions and municipal statutes is also different. It should be noted that the statutes of territorial communities are becoming more and more detailed. The legal institutions contained in the constitutions of the republics and in the statutes differ little from the constitutional institutions in general, although there are some peculiarities. For example, there is no institution of citizenship in the statutes, there are differences in the institution of human and civil rights and freedoms. The issue of municipal human rights in Ukraine is developed by M.O. Baimuratov, O.V. Batanov, etc., but they mostly come to the opinion of the subsidiarity of municipal statutory regulation of human rights at the present stage of development of local self-government in Ukraine.

Another interesting institution when it comes to comparing the content of the Basic Laws and statutes of territorial communities of cities is the institution of constitutional control. The statutes of territorial communities of cities do not have a special place in the legal system of the state, and therefore there are no features of their legal protection, interpretation of the content of their norms, and so on.

It also draws attention to the fact that there are no requirements for constitutions to comply with any legal requirements, while the statutes of territorial communities of cities are by-laws and, therefore, their provisions cannot conflict with the provisions of the Basic Law, and other laws.

Analyzing the substantive features of constitutions and municipal statutes, it is necessary to dwell on their similar features.

First, the structure of the statutes of territorial communities is similar to the constitutions. As a rule, they begin with a preamble, which, like the constitutional preamble, is short and solemn. The main part of the statutes, as well as the main part of the constitutions, is divided into chapters and/or sections, which in turn consist of articles. Like the articles of the constitutions, the articles of the statutes sometimes have a name and a serial number, and sometimes only a serial number.

Secondly, if the constitutions act as a “legal entity” of the state, containing basic information about the state from a legal point of view, emphasize national identity, then similar rules exist in municipal statutes. Only, these are features of different levels. Thus, “the constitutional doctrine must ensure the individualization, self-identification of the domestic legal system, taking into account what is happening, the process of general civilizational unification of a number of parameters of national legal systems of different states”.

As for the statutes of territorial communities of cities, one of the main ideas in their adoption is to consolidate the historical, national-cultural, socio-economic and other features of the urban territorial community. In previous publications,

considering such features, it was proposed to distinguish firstly, the provisions relating to the characteristics of the territorial community, and secondly – the provisions relating to the specifics of local self-government by the territorial community.

**Conclusions from this study.** Consideration of both substantive and formal features of the statutes of territorial communities in comparison with similar features of the Basic Laws gives grounds to state almost complete lack of similarity between these acts. Certain analogies can be made only in relation to the structure of these acts, and sometimes a similar legal technique is used in their writing. An important common feature is the desire to express in the constitutions – national identity, and in the statutes of territorial communities of cities – historical, national-cultural, socio-economic and other features of the urban community. Thus, to call the statutes of territorial communities of cities “local constitutions”, as is often the case in the literature, is hardly fair. Prospects for further research in this direction are a deeper analysis of the nature and legal nature of the statutes of territorial communities of cities.

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