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CITY CHARTERS IN UKRAINE

In Ukraine, both municipal reform and the reform of decentralization of public power are underway. Both of them concern issues of local self-government in cities. Both of them are related to the further improvement of the normative regulation of such self-government. At the local level, the main document on the basis of which it is carried out is the charter of the territorial community. Despite their importance for science and practice, the statutes of territorial communities of cities remain poorly studied in the Ukrainian legal literature.

The author of the article has been actively researching the issues of the statutes of territorial communities in Ukraine in general and the statutes of territorial communities of cities in particular for more than five years. The article presents the author's work, conclusions and generalizations on this issue.

Thus, the author offers his own definition of the term "statute of the territorial community of the city" and draws attention to the fact that so far this concept has not been defined in the Ukrainian legal literature. The author provides a brief overview of the works of authors that will be useful to researchers on this issue – some scholars have devoted their work to the statutes of territorial communities in general, some – exclusively to the statutory law of cities. The author suggests to pay attention to the fact that it is necessary to refuse to call the statutes of territorial communities "local constitutions". Based on a study of the statutes of Berdyansk, Vinnytsia, Zhytomyr, Zaporizhia, Ivano-Frankivsk, Kirovohrad, Kyiv, Odessa, Ternopil, Kharkiv, Cherkasy, and others, the author formulates a conclusion about the inexpediency of such an approach. Doctrinal arguments are also put forward in his favor.

The author pays considerable attention to highlighting the features of the statutes of territorial communities and thoroughly characterizes each of them (including such as special legal techniques and thesaurus, special order of development and adoption, stability, ability to act as the foundation of rule-making).

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

Ідесіс І. В. СТАТУТИ ТЕРИТОРІАЛЬНИХ ГРОМАД МІСТ В УКРАЇНІ

В Україні зараз тривають як муніципальна реформа, так і реформа децентралізації публічної влади. Обидві з них стосуються питань місцевого самоврядування у містах. Обидві з них мають відношення до подальшого удосконалення нормативного регулювання такого самоврядування. На місцевому рівні основним документом, на підставі якого воно здійснюється, є статут територіальної громади. Попри свою важливість для науки і практики, статuti територіальних громад міст залишаються малодослідженими в українській юридичній літературі.

Автор статті більше семи років активно досліджує проблематику статутів територіальних громад в Україні загалом та статутів територіальних громад міст зокрема. У статті викладено авторські напрацювання, висновки та узагальнення з цього питання.

Так, автор пропонує власне визначення поняття «статут територіальної громади міста» та привертає увагу до того факту, що поки що це поняття в українській юридичній літературі не було визначено. Автор надає стислий огляд праць авторів, що стануть у нагоді дослідникам цього питання, – деякі вчені присвячували свої роботи статутам територіальних громад загалом, деякі – виключно статутному праву міст. Автор пропонує звернути увагу на те, що варто відмовитись від іменування статутів територіальних громад «місцевими конституціями». На підставі дослідження статутів міст Бердянська, Вінниці, Житомира, Запоріжжя, Івано-Франківська, Кіровограда, Києва, Одеси, Тернополя, Харкова, Черкас, інших міст автор формулює висновок про недоцільність такого підходу. Також на його користь наводяться й доктринальні аргументи.

Автор приділяє значну увагу виокремленню ознак статутів територіальних громад та ґрунтовно характеризує кожен з них (у тому числі такі, як особлива юридична техніка та тезаурус, особливий порядок розробки та прийняття, стабільність, здатність виступати фундаментом нормотворчості).

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

Formulation of the problem. In Ukraine, the territorial community as the primary subject of local self-government received its recognition after the declaration of independence. As for local self-government in cities, its separate regulations are almost absent to this day. As a result, there is relatively little work on the statutes of urban communities.

Research analysis. The study of the statutes of territorial communities of cities is based on the municipal legal developments of professors

Baimuratov, Batanov, Lyubchenko, Mishyna, Orzikh, Pogorilko, Fritsky. Though, they have never dedicated their works to the statutes of the cities' territorial community (professor Orzikh and professor Lyubchenko were the authors of the statutes in their native cities).

There are some Ukrainian researchers, who dedicated their works to the researched topic – N. Chudyk ("Statute of the territorial community as a source of constitutional law in Ukraine", 2011), I. Zaytseva ("Constitutional support of statutory rule-making

in local self-government in Ukraine”, 2013) and D. Zayats (“Statutory regulation of the system of local self-government in Ukraine”, 2009). However, first of all, in these dissertations the authors do not dwell on the issue of the statutes of territorial communities of cities (although most of the theoretical statements are illustrated by the materials of the statutes of territorial communities of cities). Secondly, they were written before the beginning of the next stage of municipal reform in Ukraine, which is characterized by the intensification of the processes of decentralization of public power, and hence – increasing the importance of the statutes of territorial communities, including bridge.

The purpose of the article is to generalize the researches on statutes of the cities’ territorial communities in Ukraine.

Considerable attention is paid to the issue of model statutes of territorial communities, including territorial communities of cities.

The model statute (statutes) of the territorial community in Ukraine has not been approved yet. It is argued that there is no need for the Verkhovna Rada of Ukraine or other state authorities to approve the model statute (statutes) of the territorial community.

The advantages of diversification rather than unification in this area are presented. It is noted that the current trends of reducing the number of new proposals for the implementation of model statutes of territorial communities, and accordingly – new developments of model statutes of territorial communities are associated first with the refusal to enshrine in the law of Ukraine or by law model model (statutes), even and of a recommendatory nature, and secondly, with a much higher practical benefit of draft statutes written for settlements of one kind or another than model statutes (compared to draft statutes, model statutes have a higher degree of generalization of their provisions). It is proposed to create a database with electronic texts of all model statutes of territorial communities on the Official Website of the Ministry of Justice of Ukraine (see [3]).

The author of the article analysed a number of author’s drafts of statutes of territorial communities of cities are analyzed, on the basis of which the offer on inclusion in database with electronic texts of all model statutes of territorial communities on the Official website of the Ministry of Justice of Ukraine also author’s drafts of statutes of territorial communities is formulated. It is argued that this is fully consistent with the idea of diversification, rather than unification of model statutes of territorial communities. The importance of author’s drafts of statutes of territorial communities of cities formed for a particular city in the development of statutes of territorial communities of other cities of Ukraine is emphasized given the high scientific level of the text of these author’s draft statutes.

It is revealed that the current stage of municipal reform in Ukraine provides for the intensification of decentralization of public power and further practical implementation of the principle of subsidiarity. The importance of the statutes of territorial communities of cities in this process is difficult to overestimate. Especially because, according to historians, cities in Ukraine have significant potential and traditions in this area, which developed during the existence of Magdeburg and Helminth law (similar remarks on the ancient statutory traditions in villages and settlements are not found) [4].

It is generalized that the Magdeburg and Helminth law was in essence a city law. City law existed later, when parts of the modern territory of Ukraine were part of the Austro-Hungarian and Russian empires, although it was not as developed as Magdeburg and Helminth law. And only during the Soviet era, local self-government in most villages, towns and cities was unified, which led to the disappearance of city law. It is argued that at the present stage of municipal development of Ukraine it would be premature to talk about the existence of city law in the state. This conclusion is formulated on the basis of research of normative-legal regulation of features of local self-government for cities [5].

The territorial community of the city is a set of citizens of Ukraine who permanently reside within the administrative-territorial unit of the corresponding type.

The territorial community of the city has the characteristics of two groups:

a) general features (belonging of its members to the citizenship of Ukraine and their permanent residence in the territory of the respective administrative-territorial unit);

b) special features that distinguish it from the territorial communities of rural settlements (less high share in the regulation of social relations of such a source of municipal law as customs and traditions; less number and quality of relations between members of the territorial community given the author’s reasonable line the relationship between the number of members of the territorial community and the number and quality of links between them). The importance of taking into account the special features of territorial communities of cities when designing and making changes and additions to the statutes of territorial communities of cities is emphasized.

In addition, only such settlements as cities are divided into districts. It is emphasized that when designing the statutes of territorial communities of cities with district division, it is important to take into account that the territorial community in the city is an integral community that does not include other territorial communities, including territorial communities of districts in the city (exceptions

will be cases of voluntary association of territorial communities).

In formulating the definition and highlighting the features of the concept of “territorial community”, the author concluded that:

a) modern projects to amend the Constitution of Ukraine in connection with decentralization in terms of introducing the term “community” instead of such names administrative-territorial units, such as village, settlement, city, at the level of the Basic Law will contribute to the leveling of differentiation between rural and urban settlements, and therefore – between territorial communities of rural and urban settlements;

b) it is promising to expand the number of members of territorial communities (especially in urban communities, as more foreigners and stateless persons live in cities than in rural areas), which will be facilitated by Ukraine’s ratification of the Convention on the Participation of Foreigners in Public Life. local level from February 5, 1992.

In the literature, the statutes of territorial communities, including statutes of territorial communities of cities, often called “local constitutions”. It was found that in the Ukrainian legal literature a thorough comparison of the statutes of territorial communities in general and the statutes of territorial communities of cities in particular with the Constitution of Ukraine was not made. The comparison was made on formal and substantive grounds. During the comparison, the statutes of territorial communities of a number of Ukrainian cities were worked out, including Berdyansk, Buchansk, Vinnytsia, Dnipro, Zhytomyr, Zaporizhia, Ivano-Frankivsk, Irpin, Kirovohrad, Kyiv, Lutsk, Odessa, Poltava, Ternopil, Sumy, Kharkiv, Cherkasy, Chuguev, etc. [6].

The statutes of territorial communities of Ukrainian cities were compared with the Constitution of Ukraine on such formal grounds as:

- mandatory existence (the presence of the Constitution is considered a prerequisite for the proper functioning of the legal system of Ukraine, while the statutes of territorial communities of cities are not a normative act, the adoption of which the law enshrines as mandatory);

- the need for state registration (established only for the statutes of territorial communities of Ukrainian cities). By comparison, it was found that currently the state registration of the statutes of territorial communities of cities is a procedure that is more like the procedure of registration of the statutes of territorial communities of legal entities, rather than the procedure of registration of regulations. The most important argument in favor of this is the presence of a fee for such registration (which in the literature is proposed to cancel for a significant number of years).

The conclusion on expediency of cancellation of the state registration for charters of territorial communities as a whole is formulated:

- the highest legal force (this feature is inherent in the Constitution of Ukraine and does not apply to regulations of other types, including – the statutes of territorial communities of cities. It was found that in the statutes of territorial communities of some Ukrainian cities is in contradiction with the current legislation of Ukraine);

- ability to act as a foundation of rule-making (inherent in the Constitution of Ukraine, but not in the statutes of territorial communities of cities. The latter currently mostly act as codified regulations, which often contain direct citations of the Constitution and laws of Ukraine);

- direct effect (it is formulated that from the number of compared normative acts this feature is peculiar only to the Constitution of Ukraine, despite the presence in the text of the statutes of territorial communities of some cities of the norm on direct effect of the statute.

- stability (the Basic Law of Ukraine has such a feature, it is absent in the statutes of territorial communities of cities. Based on the analysis of the statutes of territorial communities of Ukrainian cities, examples are given when city councils, seeking to provide stability to the statute of making changes and additions to it, it is argued that this violates the rights of other subjects of municipal self-government);

- the procedure for drafting and adopting (on this basis, the Constitution of Ukraine of 1996 and the statutes of territorial communities of cities coincide - the current legislation at the national level does not establish procedures for drafting and adopting both the Basic Law and these statutes. it has been established that in some statutes the city councils have introduced a complicated procedure for developing and adopting not only changes and additions, but also statutes in a new edition.

- special legal technique and thesaurus (both the Constitution of Ukraine and the statutes of territorial communities of cities are normative acts that are set taking into account the requirement of accessibility of perception of their norms to a wide range of people. to facilitate the perception of the content of the Constitution and the statutes of territorial communities of cities.

It is summarized that most of the formal features of the statutes of territorial communities of Ukrainian cities and the Constitution of Ukraine do not coincide.

Based on the analysis of the statutes of territorial communities of Ukrainian cities in terms of human rights regulation, it was found that the statutes do not contain comprehensive regulation of human rights (like constitutional – ie, personal, political,

social, economic, cultural and environmental rights in general). However, in the statutes of territorial communities of Ukrainian cities there are examples of consolidation of both individual and individual collective rights of the individual.

Conclusions from this study. It is generalized that the statutes of territorial communities of cities mostly specify the right of members of the territorial community to participate in local self-government and its components (active and passive suffrage in local elections, the right to initiate and participate in local referendums and general meetings of citizens), and participate in the work of self-organization of the population, etc.).

The statute of the territorial community of the city is a bylaw adopted by the city council to take into account historical, national-cultural, socio-economic and other features of municipal self-government and regulation of collective participation of members of the territorial community in its implementation.

References

1. Мішина Н. В. Органи самоорганізації населення у контексті теорій про природу місцевого самоврядування. *Електронне наукове видання «Аналітично-порівняльне правознавство»*. 2021. № 1. С. 26–30.
2. Mishyna N. V. Guarantees of Local Government in Ukraine | Гарантії місцевого самоврядування в Україні. *ЮРИДИКА | JURIDICA*. 2020. № 2. С. 15–18.
3. Нестор В. Р. Міське самоврядування в Україні та в Сполученому Королівстві Великобританії і Північної Ірландії: компаративне дослідження. – Кваліфікаційна наукова праця на правах рукопису : дис. ... д-ра юрид. наук. Київ, 2021. 434 с.
4. Ідесіс І. В. Законодавча регламентація місцевого самоврядування українських міст. *Право і суспільство*. 2015. № 6-2. С. 19–24.
5. Ідесіс І. В. Статути територіальних громад міст – «місцеві конституції»? *Науковий вісник Херсонського державного університету. Серія «Юридичні науки»*. 2015. № 5. Т. 1. С. 71–74.
6. Ідесіс І. В. Проблемні питання прийняття й реєстрації статутів територіальних громад в Україні. *Науковий вісник Міжнародного гуманітарного університету. Серія «Юриспруденція»*. 2014. № 10–2. Т. 1. С. 55–58.