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STATUS OF OBLAST COUNCILS IN THE SYSTEM OF IMPLEMENTATION OF LOCAL SELF-GOVERNMENT IN UKRAINE

Place of regional councils in the system of local self-government in Ukraine at the current stage is blurred. The key element of self-government, namely territorial community, is absent on that territorial level. Analyzing this, authors conclude with the proposal of implementation of regional self-government into current Ukrainian legislation.

Key words: local self-government; region; regional council; territorial community; guarantees to local self-government; legality; democracy.

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СТАТУС ОБЛАСНИХ РАД У СИСТЕМІ ЗДІЙСНЕННЯ МІСЦЕВОГО САМОВРЯДУВАННЯ В УКРАЇНІ

Місцеве самоврядування в Україні перебуває на стадії реформування, у той же час серед його проблем – статус обласних рад. Обласні ради репрезентують адміністративний рівень регіону і є свого роду асоціативними органами, оскільки ключовий елемент системи місцевого самоврядування – територіальна громада – на цьому рівні відсутній. Звідси виникає проблематика забезпечення діяльності обласних рад на законодавчому та організаційному рівні, дотримання у цьому процесі вимог Конституції та законів України. Основою статусу обласних рад є їх визначення як органів, що репрезентують спільні інтереси територіальних громад, а також загальні принципи та гарантії діяльності місцевого самоврядування в Україні, серед яких особливе місце займають принципи демократії, законності, гласності, колегіальності, поєднання місцевих та загальнодержавних інтересів, правової, організаційної, та матеріально-фінансової самостійності в межах повноважень, визначених законодавством, тощо.

Обласні ради, будучи де-юре складовою частиною місцевого самоврядування, а де-факто – конституційно невизнаним органом регіонального самоврядування, окрім цього виконують роль посередника між органами місцевого самоврядування на рівні територіальних громад та районів і державою. Проведений аналіз дає підстави стверджувати, що уналежнення обласних рад до системи місцевого самоврядування є недосконалим і неприродним. В масштабах області самоврядування не може бути місцевим, бо в такому статусі воно може існувати тільки на рівні територіальної громади. Тому необхідно шляхом прийняття змін до законодавства відновити в Україні регіональне самоврядування. Таким чином, важливим для вдосконалення роботи обласних рад може бути прийняття нової редакції закону про самоврядування.

Ключові слова: місцеве самоврядування; регіон; обласна рада; територіальна громада; гарантії місцевого самоврядування; законність; демократія.

Постановка проблеми

Local self-government in Ukraine at the current stage of development of the Ukrainian state is in the process of reform. Assignment of regional councils to local self-government bodies in the absence of council executive bodies at this level and obligatory delegation of powers to state administrations leads to a certain blocking of the development of self-government in Ukraine. Local self-government in Ukraine is carried out on the principles of: democracy; legality; publicity; collegiality; combination of local and state interests; election; legal, organizational and material-financial independence within the powers defined by the current legislation; accountability and responsibility to territorial communities of their bodies and officials; state support and guarantees of local self-government; judicial protection of the rights of local self-government.

As for the issues of status, principles of organization of activities and powers of regional councils, in the scientific literature this topic is not fully explored. The organization and activities of regional councils are primarily based on most of the above constitutional legal principles of local self-government, by which scholars understand both the law and the real ability of local governments to regulate a significant part of state affairs and manage them in the interests of local self-government. The issue of the status of the regional council, its place and role in the system of self-government in Ukraine has not been given due attention so far.

Аналіз останніх досліджень і публікацій

Significant scientific provisions on the essence of self-government, the foundations of organization and activity of regional councils, their powers, role and place in the system of power organization are contained in the works of such Ukrainian scientists as: V. Averyanov, O. Baimuratov, V. Barakhtyan, I. Butko, V. Campo, R. Davydov, O. Fritsky, A. Kolodiy, V. Kopeychikov, M. Kornienko, V. Kravchenko, L. Krivenko, V. Kuznetsova, N. Nyzhnyk, B. Olkhovskiy, M. Onyschuk, V. Opryshko, M. Orzikh, I. Pakhomov, R. Pavlovsky, V. Pogorilko, M. Pukhtinsky, S. Sakhanenko, A. Selivanov, V. Shapoval, Y. Shemshuchenko, A. Tkachuk, Y. Todyka, M. Tsvik, M. Voronov, V. Yavorsky etc.

Виділення невирішених раніше частин загальної проблеми

Regional councils have a special place in the system of local self-government, as they represent its regional level. Regional councils can be defined as a kind of associative bodies of local self-government. At the same time, there is no concept of regional self-government in Ukrainian legislation, although the practice of regional councils shows its de facto existence. The issue of the status of the regional council, its place and role in the system of self-government in Ukraine has not been given due attention so far, as evidenced by the lack of scientific literature on this topic.

Мета

The purpose of the article is to analyze the powers of regional councils as a body of joint competence of territorial communities, for which it is necessary to substantiate the legal nature of the regional council as a body of joint competence of territorial

communities; show problems of legal and organizational support of regional councils; to identify the state of compliance with the Constitution of Ukraine and the Law of Ukraine «About Local Self-Government in Ukraine».

Виклад основного матеріалу

The Constitution of Ukraine enshrines local self-government and its principles, creates the necessary preconditions for the formation and further development of local self-government in this direction. It states that local self-government is recognized and guaranteed in our state. According to the Constitution of Ukraine, the latter is the right of a territorial community - villagers or voluntary association in a rural community of residents of several villages, towns and cities - to independently resolve issues of local importance within the Constitution and laws of Ukraine [3, p. 352].

Local self-government, in turn, guarantees the inhabitants of villages, settlements, cities the right to decide a range of local affairs and from this point of view, with proper practical implementation has unlimited democratic potential, is considered a generally accepted form of "local" democracy.

The Constitution and the Law of Ukraine «About Local Self-Government in Ukraine» refer to local self-government as district and regional councils, which in accordance with part 4 of art. 140 of the Constitution of Ukraine are local governments representing the common interests of territorial communities of villages, settlements and cities. Thus, the regional self-government in Ukraine existing until 1996 with the adoption of the Constitution of Ukraine was deprived of constitutional status [6, p. 12].

According to the Constitution of Ukraine and the Law of Ukraine «About Local Self-Government in Ukraine» (Article 4), local self-government in Ukraine is carried out on the principles of: democracy; legality; publicity; collegiality; combination of local and state interests; election; legal, organizational and material-financial independence within the powers defined by the current legislation; accountability and responsibility to territorial communities of their bodies and officials; state support and guarantees of local self-government; judicial protection of the rights of local self-government.

As for the specific principles of organization and activity of regional councils, in the scientific literature this topic is not fully explored. The organization and activities of regional councils are primarily based on most of the above constitutional legal principles of local self-government, by which scholars understand both the law and the real ability of local governments to regulate a significant part of public affairs and manage them in the interests of local self-government [10, p. 212].

The principle of democracy is one of the most important in the organization and operation of regional councils as self-governing bodies. According to the Constitution of Ukraine, the people, as the bearer of sovereignty and the only source of power in Ukraine, have an unconditional and priority right (natural right) to its direct realization and realization it in various ways, including through elections delegate the realization of power to the state constitutional bodies and local governments. Local self-government can function effectively only if there is an optimal combination of direct and representative democracy. According to art. 5 and part 3 of art. 140 of the Constitution of Ukraine, local

self-government is exercised by the territorial community both directly and through local self-government bodies, which, in addition to village, settlement, city councils, include district and regional councils representing the common interests of territorial communities. All these councils consist of deputies elected on the basis of universal, equal, direct suffrage by secret ballot.

Direct popular expression is carried out by certain forms defined and enshrined in the Constitution of Ukraine and certain laws. The main ones are: elections, referendums, people's legislative and local initiatives, other forms of direct democracy (Article 69 of the Constitution of Ukraine). In addition, the Law of Ukraine «About Local Self-Government in Ukraine» calls the general meeting of citizens at the place of residence a form of their direct participation in addressing issues of local importance [7, p.14].

The principle of legality in the activities of regional councils is that each council, its official must strictly abide by the Constitution of Ukraine and the laws of Ukraine act only on the basis, within the powers and in the manner prescribed by the Constitution of Ukraine and laws of Ukraine.

The Constitution of Ukraine enshrined local self-government as an important element of the constitutional order, as one of the forms of democracy. The Constitution of Ukraine obliges the regional council in its activities to comply with the requirements of article 19, which stipulates that the legal order in Ukraine be based on the principles according to which no one can be forced to do what is not provided by law.

Article 140 of the Constitution of Ukraine, defining the regional council as a local government body representing the common interests of territorial communities of villages, settlements and cities, in its second and third parts again emphasizes the principle of legality in local government, stating that local government is carried out in the prescribed manner by law, both directly and through local governments [1, p. 50].

To regulate the work of the regional council, the current legislation obliges to approve the regulations of the work of the council, as well as the provisions on the standing commissions of the council no later than the second session. The activities of the regional council and its bodies, the procedure for convening a session of the council, preparation and consideration of issues, decision-making of the council on approval of the agenda of the session and other procedural issues, as well as the session are determined by the council regulations.

The principle of publicity provides an open public nature of the regional council in the system of local self-government and systematic information of residents of the region about this activity in order to attract broad sections of the population to intensify the work of the council and its bodies [5, p. 378].

The Law of Ukraine «About Local Self-Government in Ukraine» provides a wide field for the implementation of the principle of publicity. According to this Law (Article 13), the activity of the regional council is open. Voters have the right to hold public hearings - to meet with deputies of the relevant council and local government officials, during which members of the local community can hear them, raise issues and make proposals on issues of local importance related to local government. Public hearings are held at least once a year. According to art. 46 of the

Law «About Local Self-Government in Ukraine» council sessions are held openly. Information on convening sessions, on decisions taken is publicly available and widely disseminated.

The principle of collegiality provides, first of all, a collective discussion of issues of regional life and their collegial solution by regional councils. The Law of Ukraine «About Local Self-Government in Ukraine» contains a number of norms that enshrine the principle of collegiality in the work of the regional council. The regional council is competent if at least two thirds of the deputies from the general membership of the council are elected to it, and conducts its work collectively, which manifests itself in the form of sessions. The session consists of plenary meetings of the council, as well as meetings of the standing commissions of the council (Article 46).

The Presidium of the regional council is an advisory collegial body that develops and formulates collective opinion. The presidium of the regional council may prepare in advance agreed proposals and recommendations on the issues to be submitted to the council. The main task of the presidium is the collegial adoption of recommendatory decisions on issues that fall within the competence of the regional council. Based on the principle of collegiality, a meeting of the Presidium is valid if it is attended by at least half of its total membership, and the decision of the Presidium is taken by a majority vote of its total membership.

The principle of combining local and state interests is also important in the activities of regional councils as regional representative bodies of self-government. General state interests cover the entire territory of Ukraine and all its citizens, and local - those or other areas and citizens living in the relevant territory. This determines the interaction of interests and the relationship of local governments with the state executive.

It should be noted that neither the Constitution of Ukraine nor the Law of Ukraine «On Local Self-Government in Ukraine» clearly delineates the spheres of interests of the state executive power and local councils. National interests include foreign policy and defense, national finances and security of the state, institutions that carry out executions, measures and institutions that contribute to the welfare of the people as material (censuses, quarantines, roads of national importance, post and telegraph, monetary system, national credit institutions, etc.) and spiritual (public education, the state's attitude to the church) importance [2, p. 39].

Areas of local interest scientists define the management of local economy and funds of local councils, communal property, schools and other socio-cultural institutions, improvement of cities, towns and villages, arrangement of roads of local importance, sanitary and medical services, social protection, food, consumption measures to prevent natural disasters [8, p. 712].

The principle of election underlies the formation of regional councils. Elections, as an act of self-government of the people, as the most massive process that knows the law. According to this principle, reflected in the current legislation, the regional council, as well as other local governments, can be formed only through elections. But the procedure for forming regional councils has remained outside the Constitution of Ukraine and is regulated by the Electoral Code of Ukraine.

The principle of legal, organizational, and material and financial independence within the powers defined by law is one of the main, which ensures the subordination of the regional council to other bodies of state power and local self-government.

Bodies of executive power, their officials have no right to interfere in the lawful activities of bodies and officials of local self-government, as well as to resolve issues referred by the Constitution of Ukraine, laws to the powers of bodies and officials of local self-government, except in cases delegated by councils. in other cases provided by law. In case the local state administration considers issues that affect the interests of local self-government, it must notify the relevant bodies and officials of local self-government.

The principle of legal, organizational, and material and financial independence is based on the self-sufficiency of local governments. Regional councils should have the legal, property, logistical, information-analytical and financial capacity to exercise the powers declared by law. And this includes the management of common property of territorial citizens of the region, a sufficient budget to meet the needs of the population, the inadmissibility of artificial subsidies, which in practice does not exist.

Organizational independence of the regional council is carried out through the organization and holding of plenary sessions of the council, the work of standing and other commissions, the presidium, the activities of council deputies in constituencies [4, p 73].

Among the basic principles of local self-government is the principle of its state support and guarantee, which is directly related to the organization and activities of the regional council.

Of fundamental importance for the approval of the principle of support and guarantees of local self-government is article 7 of the Constitution, which recognizes and guarantees local self-government as an element of a democratic constitutional system, as well as given when considering the principle of independence of article 71 «Guarantees of local self-government, its bodies and officials» of the Law of Ukraine «About local self-government in Ukraine».

The financial support of local self-government is mentioned in part 3 of art. 142 of the Constitution of Ukraine, which states that the state participates in the formation of local government revenues not only by setting interest deductions to local budgets from national revenue sources, but also through grants, subventions and more. The state must fully finance the exercise by local governments of state powers granted by law.

The guarantee of local self-government by the state should be facilitated, in particular, by the provisions of the Law «About Local Self-Government in Ukraine» that local budgets should be sufficient to provide the population with services not lower than the level of minimum social needs. If we take into account the actual state of the material and financial base of local self-government at the current stage of development of our state, we must recognize that this is the norm - intention.

The principle of judicial protection of the rights of local self-government is an important legal means of ensuring the implementation of decisions of local self-government bodies, which in accordance with art. 144 of the Constitution of Ukraine are binding on the relevant

territory, if they are adopted within the competence of a particular local government body. At the highest - constitutional - level, the right of local self-government to judicial protection of its legitimate rights and interests is enshrined.

The right to judicial protection is also enshrined in the Law of Ukraine «About Local Self-Government», part 4 of art. 71 states that local self-government bodies and officials have the right to apply to the court to declare illegal acts of local executive bodies, other local self-government bodies, enterprises, institutions and organizations that restrict the rights of territorial communities, powers of local self-government bodies and officials. In addition, these may be property disputes pending before arbitral tribunals.

In turn, the activities of local governments must be carried out in accordance with the requirements of the Constitution of Ukraine and the laws of Ukraine (article 19 of the Constitution of Ukraine). In accordance with part 2 of art. 144 of the Constitution of Ukraine, decisions of local self-government bodies on the grounds of their inconsistency with the Constitution or laws of Ukraine may be suspended in the manner prescribed by law with a simultaneous appeal to the court. Who exactly can stop the decision of the local government - is not defined [9, p. 160]. This must be resolved by law.

Summarizing the above, we can conclude that, consolidating the foundations of local self-government, being a synthesizing principle, unifying ties, the practical basis for the emergence, formation and functioning of many legal phenomena (including in the activities of the regional council), constitutional the principles of local self-government are designed to ensure the relationship of the regional council with the state and society.

Висновки

The results of the study indicate that the emergence of regional councils as part of the system of local self-government has become possible due to the process of democratic transformation of Ukraine. In the organization and activity of regional councils the analysis of the legislation on local self-government allows to allocate the following basic principles: democracy, legality, publicity, collegiality, combination of local and state interests, election, legal, organizational, and material and financial independence within the powers defined by the legislation. and responsibility to territorial communities of their bodies and officials, support and guarantees of local self-government, judicial protection of the rights of local self-government.

Regional councils, being a de jure part of local self-government and a de facto constitutionally unrecognized body of regional self-government, also act as a mediator between local self-government bodies at the level of territorial communities and districts and the state.

The regional council has important functions in the system of local self-government - the main directions of its activity. The division of powers between the constituent parts of the regional council is established by the Law of Ukraine «On Local Self-Government in Ukraine» regarding the exclusive competence of the council (these issues are decided at the session), chairman and deputy chairman, presidium (board), permanent and temporary control commissions, deputies, for the sake of.

The analysis gives grounds to claim that the attribution of regional councils to the system of local self-government

is imperfect and unnatural. On the scale of the oblast, self-government cannot be local, because in such a status it can exist only at the level of the territorial community. Therefore, it is necessary to restore regional self-government in Ukraine by adopting amendments to the legislation.

Thus, the adoption of a new version of the law on self-government may be important for improving the work of the regional council.

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