

SECTION 3

**CONSTITUTIONAL AND LEGAL PRINCIPLES
OF ORGANIZATION OF ACTIVITY OF STATE AUTHORITIES
AND LOCAL GOVERNMENT**

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UKRAINIAN MUNICIPAL REFORM: CONSTITUTIONAL BASIS

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Summary

The purpose of the article is a teleological and formal analysis of the related to municipal reform constitutional-conceptual documents approved by public authorities. This topic is relevant to the contemporary urgent constitutional problems, because at the beginning of 2020 President of Ukraine announced his plans to initiate changes to the Constitution 1996 about the local government.

The main methods of the research include classical legal science methods. The author uses formal analysis, synthase, inductive and deductive approach to the problems, covered by the article. While looking at the text of Ukrainian Basic Law 1996 and other documents, the author uses the most common methods of legal interpretation (original intention method, purposivism and other).

Results. The author analyzes the constitutional basis of the ongoing Ukrainian municipal reform, that was launched in 1998. Since that time, the Head of the Ukrainian state (President), the Parliament of Ukraine (Verkhovna Rada of Ukraine) and the Government of Ukraine (Cabinet of Ministers of Ukraine) participated in the regulation of this reform. Their actions can't be characterized as concerted, that is why the biggest part of the documents aim the same results (efficient local self-government according to the European municipal standard and best foreign practices). But the ways of reaching this result differs a lot – it might be revision of the administrative-territorial division, it might be decentralization of the public power, it might be deconcentrating of the local self-government bodies' competence.

Conclusion. The author recommends, firstly, to revise the concepts of the local self-government reform in Ukraine – as some of the documents, that are really out-of-the-date, should be cancelled. Secondly, all of the existed documents should be analyzed, and in case if there is some interesting and perspective proposal – it can be included to the last version of the Municipal Reform Concept. Thirdly, like the last Concept, they should include not only actions, but actions accompanied by the timeline.

Key words: local government reform, local self-government, municipal government, municipal government, public authority.

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1. Introduction

Municipal reform (reform of local self-government) in Ukraine has been going on for a long time, but it is still relevant - perhaps because none of its stages have been completed yet, showing such significant successes that would provide grounds for its completion. The concepts of this reform approved by the state authorities play an important role in the municipal reform, therefore the doctrinal analysis of these documents is an important scientific task.

Problems related to municipal reform in Ukraine were studied from the constitutional point of view by many national scientists including M. Baimuratov, O. Batanov, B. Kalinovskiy, P. Lubchenko and others. The doctrinal support of local self-government reform in Ukraine can be considered appropriate, but so far its regulatory support remains very weak, including when it comes to the concepts of this reform approved by public authorities. The study of the constitutional-conceptual documents from a formal and substantive point of view is not yet common in the national legal literature.

The purpose of the article is a teleological and formal analysis of the related to municipal reform constitutional-conceptual documents approved by public authorities. This topic is relevant to the contemporary urgent constitutional problems, because at the beginning of 2020 President of Ukraine announced his plans to initiate changes to the Constitution 1996 about the local government.

The main methods of the research include classical legal science methods. The author uses formal analysis, synthase, inductive and deductive approach to the problems, covered by the article. While looking at the text of Ukrainian Basic Law 1996 and other documents, the author uses the most common methods of legal interpretation (original intention method, purposivism and other).

2. Ukrainian Municipal Reform: Overview of the Current Constitutional Problems

Recourse to Government-approved concepts of most of the stages of municipal reform draws attention to the fact that this reform has never been carried out (and therefore not regulated) «independently», without combining it with reforms

of other public authorities or other areas of state and public life. Since the declaration of independence of Ukraine, the state authorities have approved five documents entitled “Concept”, mostly or partially devoted to municipal reform. In addition to these five Concepts, there are a number of programs of state support for the development of local self-government, but their authors did not focus exclusively on municipal issues.

For example, the purpose of the Program of State Support for the Development of Local Self-Government in Ukraine (approved by the Decree of the President of Ukraine of August 30, 2001) was strengthening the foundations of civil society, the development of democracy; improving the legal framework of local self-government; strengthening the material and financial basis of local self-government; improving the conditions for ensuring the livelihood and social protection of the population, providing it with social services at the appropriate level; developing the initiative of the population in the decision of questions of local value. The program provided for the urgency of making proposals for measures aimed at further administrative reform in Ukraine at the local level, implementation of state regional policy, strengthening the economic base of territorial communities, improving the provision of administrative and public services to the population (Program of state support for the development of local self-government in Ukraine, 2001).

3. Municipal Reform’s Conceptual Documents in 1998 – 2001

Chronologically, the first conceptual document in which the main attention was paid to solving the problems of local self-government by reforming the territorial organization and the scope of powers of the relevant bodies is the Concept of Administrative Reform in Ukraine (approved by the Presidential Decree on July, 22, 1998). According to its norms, “in order to achieve the goal of administrative reform, a number of tasks must be solved during its implementation:

- a) the formation of an effective organization of executive power at both central and local levels of government;
- b) formation of a modern system of local self-government;

c) introduction of a new ideology of the functioning of the executive power and local self-government as activities to ensure the realization of the rights and freedoms of citizens, the provision of state and public services;

d) organization on new principles of civil service and service in local self-government bodies;

e) creation of a modern system of training and retraining of managerial staff;

f) introduction of a rational administrative-territorial system' (Concept of administrative reform in Ukraine, 1998).

Thus, a review of the system of public authorities at the central and local levels was envisaged. It should be emphasized that even the title of the normative legal act and its part I «General principles of administrative reform» did not refer to municipal reform, although given the purpose of the reform defined in the Concept, the title «administrative and municipal reform» would be more accurate.

From the point of view of reflecting the content, the chronologically following document is the Concept of Amendments to the Laws of Ukraine «On Local Self-Government in Ukraine» and «On Local State Administrations» (approved by the order of the Cabinet of Ministers of Ukraine, 2001, March 1). The Concept emphasizes that the amendments to the Laws «On Local Self-Government in Ukraine» and «On Local State Administrations» are caused by the need to increase the role of local executive bodies and local governments in implementing the strategy of economic and social development of Ukraine for 2000-2004, defined in the Address of the President of Ukraine to the Verkhovna Rada of Ukraine «Ukraine: Progress in the XXI Century. Strategy of Economic and Social Development for 2000-2004», and one of the main reasons for «joint» reform of local governments and local executive bodies is that that «the imperfection of legal norms creates excessive tension in the relations between the heads of regional and district state administrations and the heads of regional and district councils, as well as between them and the mayors» (Concept for Amendments to the Laws of Ukraine «On Local Self-Government in Ukraine» and «On Local State Administrations», 2001).

On May 25, 2001, the Concept of State Regional Policy was approved by the Decree of

the President of Ukraine. According to its provisions, «the main goal of the state regional policy is to create conditions for dynamic, balanced socio-economic development of Ukraine and its regions, improve living standards, ensure compliance with state-guaranteed social standards for each of its citizens regardless of residence, and deepen processes of market transformation on the basis of increasing the efficiency of using the potential of the regions, increasing the effectiveness of management decisions, improving the work of public authorities and local governments (Concept of state regional policy, 2001). It is worth mentioning that, despite the name, it is one of the few normative legal acts of conceptual and programmatic nature, which is devoted mostly (though not completely) to the reform of local governments.

4. Municipal Reform's Conceptual Documents since 2001

Chronologically, the next document was the Concept of Local Self-Government Reform, approved by the Cabinet of Ministers of Ukraine on July 29, 2009 (Concept of local self-government reform, 2009). Based on the title, the Concept covered only the problems of local self-government reform in Ukraine implementation, indicates that these documents also concerned the reform of public authorities at the local level as a whole. For example, the Action Plan provided for the development not only of such draft laws of Ukraine as «On the city with a special status Sevastopol», «On communal property», but also «On local state administrations» (new version), on amendments to the Constitution of Ukraine bodies of district and regional councils and changes in the functions of local state administrations (On approval of the action plan for the implementation of the Concept of Local Self-Government Reform, 2009).

A similar approach was used in the Concept of Local Government Reform, Self-Government and Territorial Power Organization in Ukraine, approved by the Cabinet of Ministers of Ukraine on April 1, 2014. Interestingly, this Concept does not provide a goal of reform (only tasks), but contains provisions on the purpose of the Concept: «Determination of directions, mechanisms and terms of formation of effective local self-government and territorial organization of power

to create and maintain a full living environment for citizens, provision of high quality and affordable public services, establishment of direct democracy, satisfaction of citizens' interests in all spheres of life, coordination of interests state and territorial communities" (Mishyna, 2020; Mishyna, 2017). Like previous Concepts, this document focuses not only on municipal, but also on administrative reform.

An analysis of the norms of the five mentioned Concepts shows the following.

First, public authorities are rather inconsistent and insufficiently careful about terminating those conceptual documents that have lost their relevance or have been replaced by newer ones or simply become obsolete. Among the *de jure* concepts analyzed, the Concept of Administrative Reform in Ukraine of 1998, the Concept of Amendments to the Laws of Ukraine "On Local Self-Government in Ukraine" and "On Local State Administrations" of 2001, the Concept of State Regional Policy of 2001 remain valid, along with the Concept of Local Government Reform, Self-Government and Territorial Power Organization in Ukraine of 2014. *De facto*, only the last document is currently relevant. And only the Concept of Local Self-Government Reform of 2009, after the change of priorities at the next stage of municipal reform, was abolished on the basis of Government Order № 567-r of August 15, 2012.

Secondly, there is still no certainty with those entities whose powers include the adoption of conceptual acts on local government reform in Ukraine. The President approved the Concept of Administrative Reform in Ukraine in 1998 and the Concept of State Regional Policy in 2001, the Government - the Concept of Amendments to the Laws of Ukraine "On Local Self-Government in Ukraine" and "On Local State Administrations" in 2001, the Concept of Local Self-Government Reform of 2009 and the Concept of Local Government Reform, Self-Government and Territorial Power Organization in Ukraine of 2014. It is worth mentioning the role of Parliament, because the laws of Ukraine are often the normative basis for the next stage of municipal reform.

Thirdly, the generic titles of documents containing concepts of stages of municipal reforms are not unified, and individual names lack ac-

curacy. In general, each of the documents is devoted to the reform of public authorities at the local level (one - also to the reform of the of civil society's institutions). But the titles of none of the five concepts are the same. The narrowest in terms of public relations belongs to the Concept of Amendments to the Laws of Ukraine "On Local Self-Government in Ukraine" and "On Local State Administrations" of 2001. It should be followed by the Concept of Local Self-Government Reform of 2009 and then the Concept of Local Government Reform, Self-Government and Territorial Power Organization in Ukraine of 2014. As for the Concept of Administrative Reform in Ukraine of 1998 and the Concept of State Regional Policy of 2001, they do not contain in their names references to their separate provisions concerning the reform of local self-government.

5. Proposals On Concept-Making Improvements

The main advantage of the approach to give the normative basis formed only for municipal reform, is as follows. The Constitution of Ukraine of 1996, unlike the Basic Laws of some foreign countries, does not contain a section on the organization of public power at the local level. Instead, local authorities are mentioned in Section VI "Cabinet of Ministers of Ukraine. Other executive bodies", and local self-government bodies - in Section XI "Local self-government". Another argument in support of the thesis is that paying attention at the level of concepts exclusively to municipal reform will correspond to the essence of the civic theory of local self-government, on which the norms of Chapter XI "Local self-government" of the Constitution of Ukraine are based (see Mishyna, 2020).

Such an approach would be appropriate not only in relation to the conceptual regulations on municipal reform, but also to other regulations relating to local self-government. For example, the Electoral Code of Ukraine in the chapter on local elections, the Law "On Service in Local Self-Government Bodies" have a significant level of politicization. Indirect evidence of this is the fact that the conceptual changes and additions to the provisions on local elections take place, as a rule, almost simultaneously with the introduction of similar changes and additions to the provisions on elections of MPs of Ukraine,

the President of Ukraine); similarly, conceptual changes and additions to the laws on service in local self-government bodies occur, as a rule, almost simultaneously with the introduction of similar changes and additions to the Law of Ukraine “On Civil Service”). Legal unification is important in the context of increasing the legal array, but it should not become an end in itself, which affects the practical implementation at the local level of such a constitutional value as democracy. It should be noted that the decision of members of the territorial community on issues of local importance, directly or indirectly, is just a manifestation of democracy. And attempts to “strengthen” the executive branch at the local level rather meet the requirements for the effective exercise of public power. Thus, we get a conflict between democracy and the effectiveness of the exercise of public power, which constantly arises in Ukraine in the implementation of legal regulations for local government.

In addition, the significant level of politicization of local self-government does not always meet European municipal standards. Thus, in a number of member states of the European Union, local self-government is currently quite depoliticized due to both the deepening of integration processes and the conscious adherence to the idea of depoliticization in the implementation of legal regulations of local self-government.

The “authorship” of the concepts related to municipal reform indicates significant rule-making activity in this area by the executive authorities and the head of state. Paying tribute to the high professionalism of the apparatus of these bodies, their rule-making activity in all spheres of state and public life, the question arises - are they really interested in independent local self-government? It should be noted that the affiliation of local state administrations to the executive branch, headed by the Cabinet of Ministers of Ukraine, makes very doubtful the political will of the Government in the formation and further development of local governments in a democratic direction as depoliticized public authorities. From local state administrations, the implementation of which is of some interest to them, and is not a “burden” due to lack of financial or other resources.

Thus, the conceptual regulation of local self-government reform in Ukraine should be

carried out by the Parliament of Ukraine, taking into account the representative nature of this body and the desire to put into practice in local self-government such a constitutional principle as democracy.

6. Conclusion

Most of the shortcomings identified in the analysis of the concepts related to municipal reform approved by various public authorities at different times can be remedied fairly quickly – for example, the repeal of three outdated municipal reform concepts that still remain in force. Despite the loss of relevance, or revise them in order to exclude from their composition the rules of municipal reform (Concept of administrative reform in Ukraine in 1998, the Concept of State Regional Policy of 2001, the Concept of amendments to the Laws of Ukraine “On Local Self-Government in Ukraine” and “On local state administrations” in 2001). Accordingly, only the Concept of Local Government Reform, Self-Government and Territorial Power Organization in Ukraine of 2014 will remain valid (the Concept of Local Self-Government Reform in 2009 was abolished in 2012). It is substantiated that, despite the significant rule-making activity in this area of executive bodies and the head of state, it would be expedient for the Parliament of Ukraine to carry out the conceptual regulation of local self-government reform in Ukraine.

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МУНІЦИПАЛЬНА РЕФОРМА В УКРАЇНІ: КОНСТИТУЦІЙНІ ОСНОВИ

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Анотація.

Метою статті є телеологічний та формальний аналіз конституційно-концептуальних документів, пов'язаних з муніципальною реформою, затверджених державними органами. Ця тема актуальна для сучасних нагальних конституційних проблем, оскільки на початку 2020 року Президент України оголосив про свої плани ініціювати зміни до Конституції 1996 року щодо місцевого самоврядування.

До основних методів дослідження належать класичні методи юридичної науки. Автор використовує формальний аналіз, синтез, індуктивний та дедуктивний методи, підходячи до вирішення проблем, висвітлених у статті. Переглядаючи текст Основного Закону України 1996 року та інші документи, автор використовує найпоширеніші методи юридичного тлумачення (метод оригінального наміру, цілеспрямованості та інші).

Результати. Автор аналізує конституційну основу української муніципальної реформи, яка розпочалася у 1998 році. З цього часу участь у регулюванні цієї реформи брали Глава Української держави (Президент), Парламент України (Верховна Рада України) та Уряд України (Кабінет Міністрів України). Їхні дії не можна охарактеризувати як узгоджені, тому більша частина документів націлена на однакові результати (ефективне місцеве самоврядування відповідно до європейських муніципальних стандартів та найкращих закордонних практик). Але шляхи досягнення цього результату значно різняться - це може бути перегляд адміністративно-територіального поділу, це може бути децентралізація публічної влади, це може бути деконцентрація компетенції органів місцевого самоврядування.

Висновок. Автор рекомендує, по-перше, переглянути концепції реформи місцевого самоврядування в Україні – оскільки деякі документи, які вже застаріли, слід скасувати. По-друге, слід проаналізувати всі існуючі документи, і якщо є якась цікава та перспективна пропозиція – її можна включити до останньої версії Концепції муніципальної реформи. По-третє, як і остання Концепція, вони повинні включати не лише дії, але й дії, що супроводжуються часовою шкалою.

Ключові слова: *реформа місцевого самоврядування, місцеве самоврядування, муніципальне управління, муніципальна влада, публічна влада.*