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**I.V. DROBUSH,**

Head, Chair of State and Legal Disciplines, National University of Ostroh Academy, I. Malynovskyi Institute of Law, Doctor of Law, Associate Professor, Ostroh, Ukraine; e-mail: [iruna.drobush@ukr.net](mailto:iruna.drobush@ukr.net); ORCID: <http://orcid.org/0000-0002-0006-8676>

## MUNICIPALISM IN UKRAINE: HISTORICAL EXPERIENCE AND PERSPECTIVES ON DEVELOPMENT

**І.В. ДРОБУШ,**

завідувач кафедри державно-правових дисциплін Інституту права ім. І. Малиновського Національного університету "Острозька академія", доктор юридичних наук, доцент, м. Острого, Україна; e-mail: [iruna.drobush@ukr.net](mailto:iruna.drobush@ukr.net); ORCID: <http://orcid.org/0000-0002-0006-8676>

### МУНІЦИПАЛІЗМ В УКРАЇНІ: ІСТОРИЧНИЙ ДОСВІД ТА ПЕРСПЕКТИВИ РОЗВИТКУ

АНОТАЦІЇ (ABSTRACTS), КЛЮЧОВІ СЛОВА (KEY WORDS)

**Problem statement.** The article is devoted to the study of local self-government as a mandatory component of state-building. Analysing the main stages of modern state development, the author asserts that local self-government existed as the main form of self-organisation even during the pre-state period. The natural rights of territorial communities evolve with the development of the state. The role that local self-government plays in the individual community and the state as a whole is depicted through examples taken from the historical experience of foreign countries and Ukraine. Particular attention is devoted to implementing the following questions of state-building into current state practice – positive historical experience regarding the naturalness of such a political and legal phenomenon as local self-government and its universality and autonomy with regard to state authority. **Methods.** Thus, the dialectical method was used in the study of the primordial essence of the phenomenon of local self-government and its evolution as a form of public authority. The study of the historical development of organizational forms of local self-government was made possible through the use of the historical method. By applying the comparative legal method, we were able to find out the peculiarities of constitutional regulation and practices of functioning of local self-government in foreign countries. **The purpose.** The tasks of the work are to find out the essence of modern municipalism through the prism of world historical development, to evolve from primitive forms of self-government to a separate kind of public power; the main stages of development of municipalism in Ukraine (from pre-state formations of the Eastern Slavs to Ukrainian statehood); on the basis of the analysis of foreign legislation and international standards of local self-government, elaboration of proposals concerning the building a model of local self-government of the European model in Ukraine and ways of overcoming existing obstacles. **Results.** Analysis of the views of domestic and foreign scholars of the past and present on local self-government, its interaction with the state authorities gives grounds to claim that only a public approach in further reforming the entire array of municipal legislation will allow to build a truly effective model of local self-government which make it possible for the territorial community will get not only the appropriate rights, but also real opportunities to significantly improve the quality of life by participating in both making and implementing of relevant decisions on local issues. **Conclusions.** The key role in overcoming the socio-economic crisis, which implies a fundamental change in the nature and content of political, social, economic relations, transformation of the person into an active participant in local government processes, belongs to local self-government. On this basis, we consider it necessary to implement the main ideas of the municipality, which promotes the revival of participatory democracy, the need for self-organization of the population and empowerment of territorial communities with broad powers, which in turn will ensure the achievement of the main goal of modern constitutional reform which is the decentralization of public power and subsidiarity in making decisions.

**Key words:** local self-government; territorial community; decentralization; subsidiarity; European integration

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**Постановка проблеми.** Виконано дослідження інституту місцевого самоврядування як обов'язкової складової процесу світового державотворення. З аналізу основних етапів історичного розвитку сучасних держав доведено, що місцеве самоврядування виникає ще у додержавний період як основна форма самоорганізації населення. Природне право територіальної громади на місцеве самоврядування еволюціонує з розвитком держави. На прикладі історичного досвіду як зарубіжних країн, так і України, відображено генезис ролі місцевого самоврядування у житті як окремої громади, так і держави в цілому. Особливу увагу приділено питанням втілення у сучасну практику державотворчого процесу позитивного історичного досвіду щодо природності такого політико-правового явища як місцеве самоврядування, його повсюдності та автономії щодо органів державної влади. Використані **методи** – діалектичний метод при дослідженні первісної сутності явища місцевого самоврядування та його еволюції як виду публічної влади; історичний метод – в дослідженні історичного розвитку організаційних форм місцевого самоврядування; порівняльно-правовий метод – у з'ясуванні особливостей конституційно-правового регулювання та практики функціонування місцевого самоврядування у зарубіжних країнах. **Метою** роботи є з'ясування сутності сучасного муніципалізму через призму світового історичного розвитку, еволюціонування від примітивних форм самоврядування до окремого виду публічної влади; основних етапів розвитку муніципалізму в Україні (від додержавних утворень східних слов'ян до української державності); на основі аналізу зарубіжного законодавства та міжнародних стандартів місцевого самоврядування напрацювання пропозицій щодо побудови в Україні моделі місцевого самоврядування європейського зразку та шляхів подолання наявних перешкод. **Результат.** Встановлено, що аналіз поглядів вітчизняних та зарубіжних вчених минулого та сучасності на місцеве самоврядування, його взаємодію з органами держави дає підстави стверджувати, що лише громадівський підхід при подальшому реформуванні усього масиву муніципального законодавства дозволить побудувати справді дієву модель місцевого самоврядування, за якої територіальна громада отримає не лише відповідні права, а й реальні можливості істотно покращувати якість свого життя шляхом участі як у прийнятті, так і виконанні відповідних рішень щодо питань місцевого значення. **Висновки.** Визначено, що ключова роль у подоланні соціально-економічної кризи, що передбачає докорінну зміну сутності та змісту політичних, соціальних, економічних відносин, перетворення особи на активного учасника управлінських процесів на місцевому рівні належить місцевому самоврядуванню. Виходячи з цього, необхідним є втілення в життя основних ідей муніципалізму, який пропагує відродження демократії участі, необхідність самоорганізації населення та наділення територіальних громад широкими повноваженнями, що, в свою чергу, забезпечить досягнення основної мети сучасної конституційної реформи – децентралізацію публічної влади та субсидіарність у прийнятті рішень.

**Ключові слова:** *місцеве самоврядування; територіальна громада; децентралізація; субсидіарність; євроінтеграція*

### Problem statement

Local self-government is an objective phenomenon of society, one of the forms of its self-organisation. The state, like local self-government, is by nature a social institution, a form of social lifestyle and social self-organisation, but more complex than local self-government.

In the modern sense, local self-government is an optimal form of self-organisation at the local level, i.e. at the community level. We consider that the modern development of local self-government is objective and inevitable, since the current principles of local self-government express a concrete form of inherent fundamental properties related to all social systems, namely their ability to self-organise.

Thus, in the initial stages of its development, society organised itself through local self-government by applying close to modern principles, that is, local self-government was one of the first forms of social organisation long before the formation of the state. Research studies on the

history and the organisational forms of local government have substantiated this fact. Significant attention to the historical aspect of the study of the functional role of local self-government in the regulation of social issues of local importance, directly related to the identification of the main parameters of the ratio of state and self-governing structures, their interaction in the process of becoming and development of the state, the defining and functioning of local self-government as a relatively independent and multiaspectual social phenomenon was paid by both foreign scientists I.M. Diaconov [1], V.I. Gulyaev [2], I.A. Savchenko [3], Fustel de Coulange [4], A. Ladner (A. Ladner) [24], and domestic V.B. Antonovych [8], P.F. Gural [7], V.M. Campo [10], M.O. Baimuratov [11] and others in their works.

The genesis of the functional role of local self-government in addressing social issues is primarily linked to the periodization of the development of local self-government. It is proved that the process of securing the right of local self-government to

independently resolve social issues of local importance is characterized by the features of the following periods: the emergence and formation of the state of Eastern Slavic tribes in the Ukrainian lands; Magdeburg law and Europeanization of local self-government; Cossack State; Russification and entry of Ukrainian lands into the Russian Empire; revival of Ukrainian statehood (UNR period); the Soviet period; the formation of Ukraine as an independent state and the modern period of municipal development (constitutional reform and decentralization of power).

Therefore, the purpose of this article is to analyze the place and role of local self-government in organization of public life and in the system of public authority. This process is still cyclical and the heyday of the local government crisis has changed dramatically. The decisive role in this process is played by the state and the level of social and economic development of society. According to the analyzed historical experience, at certain stages the state promoted the development of local self-government, and at other times its activity was aimed at the total destruction of local self-government as an institution of direct democracy.

Its novelty lies in the proposed ways to improve the functioning of local self-government, which is not an alternative to strong state government, but rather effective local self-government is a sign of a strong state. As evidenced by historical experience, local self-government (especially in times of state crisis) is able to take on life-sustaining issues at the local level, thus contributing to the preservation and strengthening of the state, to be a stabilizing factor and to relieve social tension in society.

The tasks of the work are to find out the essence of modern municipalism through the prism of world historical development, to evolve from primitive forms of self-government to a separate kind of public power; the main stages of development of municipalism in Ukraine (from pre-state formations of the Eastern Slavs to Ukrainian statehood); on the basis of the analysis of foreign legislation and international standards of local self-government, elaboration of proposals for building a model of local self-government of the European model in Ukraine and ways of overcoming existing obstacles.

### **Modern municipalism through the prism of historical development: the path from primitive forms of self-government to a particular type of public authority**

I. Diakonov wrote that the social organisation of all primitive societies was based on a hierarchy of communal structures. Building his model on an-

cient Sumer and Akkad, the scientist pointed out that Middle Eastern society dating back to the 3<sup>rd</sup> millennium BC was based on a "household community" (a large family consisting of several generations, led by the head of the family, *pater familia*). Despite the fact that family members had their own means of production, the land was owned by a larger social association – the "rural community". Several rural communities formed a municipal community. In fact, self-governance in these early city-states was a "direct form of state administration" in such a "supercommunity" [1, p.17]. Basing his works on written data from the colonial period and archaeological sources, V.I. Guliayev demonstrated convincingly that Mayan cities of the post-classical period were "urban (territorial) communities" made up of several rural communities with a single ruler and a common religious centre, which maintained their early organisational structure and a certain level of autonomy [2, p.92]. In the typology of human settlements, the main role belongs to a functional and not a quantitative approach. The settlement structure, formed according to the "village-town" model, fully duplicates a certain social pattern, i.e. the "rural community-territorial community" [3, p.93] of the classical period.

Primitive types of self-government were formed in order to re-distribute socially useful matters, as not all members of a particular group – tribe, family and community – could cope effectively with such tasks. In fact, the latter were entrusted to certain representatives. States emerged due to a more complicated style of public life. It can be assumed that states were formed and united on the basis of self-governing communities. Thus, even at the early stage, the primitive form of self-organisation, which was based on communal regulation of social and economic processes, had some features related to a modern state structure.

The traditions of communal self-government date back to ancient Greek polis democracy. Due to complicated social relations, primitive forms of territorial self-government objectively evolved into states where state institutions were balanced by public ones.

Researching ancient communities, Numa Denis Fustel de Coulanges underlines one of their peculiarities, namely municipal faith. Every community, according to the demands of the religion itself, must be completely independent, have its own special laws, currency, a calendar, units of measure and weight, and a high judicial council. However, no court could be higher than the community court itself. Communities differed; there was nothing in

common between two communities. The most significant feature of Greek and Italian history before the Roman conquest is extreme division and each community's spirit of apartness. Neither the Greeks nor the Italians, even the Romans themselves, could imagine that several cities would be able to unite and live on equal terms under a single administration. The unification of two communities was based on a temporary agreement in order to obtain certain benefits or to avoid danger. Each city treasured its autonomy, under which citizens practised their rights, cult, and administration, and represented their religious and political independence. It was easier for a community to subjugate another one than to unite together. Only a member of the community had the right to govern this community. Sparta left its men in the cities, but they did not administer justice and did not appear at the national assembly. As they did not have legal relations with the inhabitants, they could not stay in the cities for a long time. As a result, each conqueror had to choose between two solutions: either destroy the conquered city and occupy its territory, or leave it completely free and independent. The community either ceased to exist or remained a sovereign state. If a community had a religion, it should also have an administration. If it was deprived of one, it lost the other and ceased to exist. Such complete and unconditional independence of the ancient community could disappear when the beliefs, on which it was founded, were lost. Only after changes to certain concepts could a broader idea about a state governed by other laws emerge [4, p.222–226].

Municipal life was most prosperous in the first years of the Roman Empire. In his well-known book called "History of Social Order in Ancient France", Fustel de Coulanges describes municipal authority in the Roman Empire as municipal self-governance close to the political independence of individual cities. These were "separate social organisms", which were called *civitas* or officially referred to as republics [5, p.229]. The old religion was changed according to the principle of social benefit. The simplest way to find out what social benefit was required was to gather people together and discuss everything with them. Each question was put to the vote; it was necessary to know the general opinion of the people in order to understand their common interests. Voting became an important administrative factor. It received institutional status, legal right and defined what was useful and fair; it was above magistrates and laws and became the supreme authority in the community.

The very nature of government changed. The main duty consisted in ensuring order and peace in the community, as well as authority outside the community. This policy became more important than religion; as a result, new municipal councils were created, resulting in the appearance of strategists whose authority went beyond the military; their responsibilities included relations with other communities, management of finances and matters related to municipal order and amenities.

Self-governance became the general principle of local government in the Roman Republic when Rome expanded from a small city-state to an important empire. Local authority was invested in the municipal administration, which was responsible for resolving urban tasks and managing appropriate economic resources. Cities enjoying the right to self-governance were called municipalities. According to a law promulgated in 45 BC, Julius Caesar established some general rules concerning the local urban system, namely: the principle of wide autonomy in local affairs was consolidated as the basis for municipal government although it remained under the control of Rome. In essence, municipal order was organised according to Rome's government system. The people's assembly, which was charged with electing municipal councilors and resolving daily problems, became the highest body of local government. Each city had a municipal senate consisting of 100 members, modeled on the Senate of Rome. Administrative authority and the judiciary lay within the competence of the municipal council [6, p.53].

The historical aspect of studying the functional role of local self-government in the regulation of local social issues is directly related to providing basic correlation parameters for state and self-governing structures, their interaction in state formation and development, and the identification and functioning of local government as a relatively independent multidimensional social phenomenon.

#### **Historical development of municipalism in Ukraine: from the primitive formations of Eastern Slavs to the Ukrainian state**

Local self-governance has strong roots in Ukraine, going back to the pre-state formations of the Eastern Slavs with their patriarchal self-government. Procopius of Caesarea, a Byzantine historian of the 6<sup>th</sup> century, pointed out the following: "The Slavs and the Antes are not governed by a single person, but have lived in a democracy since ancient times, and therefore, they consider happiness and misery as a common cause". Collectivist relations among members of the first

communities and collective ownership of production resources, housing and food shaped their daily life and certain rules for self-governance. In these circumstances, kin and tribe were the most important part of local self-governance.

Thus, in the pre-state era, local self-governance among Eastern Slavic tribes originated within families and the next of kin. Subsequently, the surrounding environment became more important, i.e. not the proximity of origin, but that of residence.

Thus, settlements such as hamlets, cities and regions were created, adopting customary law as the basis for communication.

The main forms of protection and support in ancient Slavic communities were community and kindred forms of assistance and protection within the kin, the family and the population, as well as economic forms of assistance and mutual assistance. The poor, the disabled and the mad (in times of Christianity, they were regarded as blessed, godly people), as well as orphans, widows, the old and the elderly belonged to a circle of people that needed assistance. The main types of assistance available to these people were the following: donations, alms distributed to the impoverished during festive, holy days and funerals, distribution of property to widows, *"prymatstvo"* – admission of a stranger as member of the household (type of adoption); *"toloky"* – joint execution of farm and household work (sowing and harvesting, assistance in housing construction, joint transportation), neighbourhood assistance on the farmstead in case of the owner's illness, and allocation of land plots to widows and elderly people, etc. We can find several examples of assistance and support of the elderly in different ethnographic papers. If a family could not take care of an elderly person, it became the duty of the entire community. According to a special community decision, the elderly were granted a land plot where they could work. A peculiar community duty was feeding and providing an elderly person with accommodation for a certain period of time. Certain forms of assistance to widows also started to appear. Food aid was provided after the harvesting period. Such tribal and community forms of assistance in Slavic communities are a prototype for the social function of local self-governance since some community members provided such assistance to socially vulnerable and unprotected persons through mutual decision-making measures.

According to the theories about the Neolithic Revolution, one of the concepts on the origin and essence of state and law – namely, self-

governance – acquired a hierarchical structured character in very early times. Significant changes in political and social and economic spheres led to the organisational formation of such self-governing institutes as the council of elders, the *"viche"* (popular assembly), etc. In the rural community, self-governance was reflected in the *"verv"*, which was mentioned in the *"Ruska Pravda"* (Rus Truth), the legal code of Kyivan Rus. The tradition of organizing *"viche"* meetings in the cities is recounted in the ancient chronicles. Thus, in the "Tale of Bygone Years", it is stated that Eastern Slavs retained one of the most important traditions of patriarchal self-governance – the election (invitation to reign) of the prince as chief official of a city. The division of powers between the prince and the free population was part of the *"viche"* way of organising governance. Urban communities were favoured with municipal self-governance, and enjoyed significant administrative, economic and judicial autonomy. The most important urban issues were resolved by municipal *"viches"*, but, for the consideration of current affairs, a *"viit"* (village headman, from Latin *"vocatus"*) and other municipal officials were elected from among the free citizens. Urban corporate property, including land, was the economic basis for local self-governance. The municipal community worked independently to establish rules for economic management, taxes, payments and other obligations.

Local self-governance of that period means that people participated directly in internal local administration, organised for communities, streets, districts, and the immediate environs of the city. It is based on the election of officials and dependence on decisions adopted by the central representative authority on a certain number of issues, but also on its independence in resolving local issues.

The rural (neighbourhood) community, which was called *"verv"*, was a self-governing entity. It united the inhabitants of several neighbouring villages and represented its citizens in relations with other communities and authorities. The land was placed under corporate ownership. *"Vervs"* were a striking example of communal self-governance.

While studying *"volost"* communities when Ukrainian lands were ruled by the Grand Duchy of Lithuania, P. F. Hural underlines the fact that the *"volost"*, as a type of territorial community, evolved from the times of Kyivan Rus, became an administrative unit of Ukrainian rural areas ruled by the Grand Duchy of Lithuania, and was a local self-governing centre with relevant elected representatives [7, p.87]. *"Volost"* communities maintained

some autonomy for resolving internal affairs, and their administrative bodies were managed by local self-governing structures, the legality of which was mostly based on traditional Ukrainian customary law. The "volost" community was headed by a "starosta", in other sources, a "starets" (an elder).

According to documentary sources, the "starosta" was chosen at the general annual meeting held in the spring from among members of the "volost", who were the most worthy and capable of representing their interests. These village elders represented their respective "volost" in relations with other "volosts", economic governors, etc. If necessary, they appealed to the authorities and even to the Grand Duke with requests concerning the interests of their "volost" inhabitants.

To resolve important issues of "volost" life, the elder summoned "volost" citizens to "viche" meetings, attended by both the heads of the households and the women and children. Issues related to payment of taxes created by the "volost", shares of common "volost" funds, land delimitation, and other controversial affairs and litigation were discussed. Meetings gathering "volost" residents came to be called "kopas".

An important function of an elder in the "volost" community was to regulate the collection of "volost" taxes, which were mostly imposed on the "volost" as a whole. Then, the "starosta", in cooperation with the village leaders, allocated the taxes to separate rural communities, which, in turn, distributed them among the households. If a household was abandoned, the "volost" either requested permissions to cancel its taxes, or repaid them at the expense of others. The elders also determined the amount of funds required for the general needs of the "volost", and announced their collection at the general meeting.

During the reign of the Grand Duchy of Lithuania over Ukrainian territories, some elements of local self-governance, especially in towns and cities, was further developed in the authority vested in the "viit". It is during this period that we note the appearance of complex relations between the central authorities, the owners of cities and municipal communities under city status.

Thus, in the cities of the Grand Duchy of Lithuania, an administration of elders functioned together with municipal self-governing bodies. The administration was a municipal body headed by an elder, who was appointed by the central authority. The "viits" were elected at the municipal "viche" (called "hromada", "kopa" or "kupa" in the documents). Municipal self-government, represented by

the authority of "viits", was legalized in the Lithuanian statutes of 1529, 1566 and 1688, which legitimized municipal "viches".

Cities, which were private or ecclesiastical property, were managed by a castle administration, headed by a governor, officer or "tiun", etc. appointed by the owner, etc. The administration was in charge of affairs of the castle, the central part of the city, the peasants assigned from the surrounding villages, and defense issues. It also collected taxes for the owner of the city and conducted internecine wars under the guidance of the governor. There was a great difference between the competencies of a "viit" as head of the municipal community and the governor as head of the administration. However, the "viits" were dependent on the castle administration, although their powers remained quite significant.

The institute of "yuridika", which existed up to the 18<sup>th</sup> century, played an important, but negative role for Ukrainian cities. This is a municipal territory, which, together with its citizens, was administratively and lawfully controlled by a feudal lord. "Yuridikas" and their citizens were not subject to municipal self-governing bodies.

Magdeburg Law, which was granted to Ukrainian cities from the middle of the 14<sup>th</sup> century, was important for the further development of local self-governance and its functional role in resolving social and economic issues. Magdeburg Law was granted to the first Ukrainian city (Sianok) by Galician prince Boleslav-Yuriy in 1339.

With the transition to Polish rule, almost all Galician-Rus cities were granted rights under Magdeburg Law: Lviv (1356), Kamianets-Podilsky (1374), Stryy and Volodymyr-Volynsky (1431), Lutsk (1432), Sniatyn (1442), Mukachiv (1445), Rivne (1493), Kyiv (1994), Dubno (1507), Ostroh (1528), Liubomyl (1541), Ternopil (1548), Korsun (1584), etc. Fifty Magdeburg certificates (letters) were granted to Ukrainian cities and towns from 1572 to 1647.

The urban population was exempted from the jurisdiction of government administrations (feudal lords, "voivods", governors, etc.) and cities were given the right of self-governance on a corporate basis, and local self-government bodies known as town councils including a "rada" and "lava" were introduced.

According to Magdeburg Law, all municipal issues relating to social and political life, property, economic activity, etc., were settled by the inhabitants themselves.

In the administrative legal sense, self-governance, thanks to Magdeburg Law, separated the

city from the "volost". The law introduced self-governing bodies, called councils, which consisted of a "rada" headed by a burgomaster and a "lava" headed by a "viit". The main duty of the burgomaster as an elder was to conduct meetings of the town council. His competence included: control over the activities of communal services, municipal treasury expenditures, protection of public order, etc. The "rada", headed by a burgomaster, was in charge of municipal and current affairs: it was responsible for increasing public wealth, avoiding increase in product prices, punishing re-sellers, when they, contrary to the order of the "rada", began selling before a given time, and ensuring proper conditions for measures and weights. The "rada" did not allow disputes in the city, protected widows and orphans, and forbade gambling. The "rada" met in a "ratusha" (city hall) not less than once a week or more frequently, as needed. Questions related to common municipal interests were discussed at the meetings.

Analysing the emergence and development of Magdeburg Law in Ukrainian territories, we came upon an interesting fact, namely that in everyday life burghers did not usually refer to the original sources, the Magdeburg letters, but rather to their well-known compilations - the statutes drawn up by reputed lawyers of the Rzeczpospolita (Polish-Lithuanian Commonwealth), namely B. Groyski, P. Scherbich, P. Kushevich, M. Jasker. In fact, municipal activities were carried out in accordance with Magdeburg Law. Only occasionally was the use of customary rules of law permitted, when those issues were not fixed by the legal rules stipulated in the Magdeburg Charter. In such cases, they referred back to the self-governing and judicial traditions of Ukrainian cities that dated way back to the times of Kyivan Rus, that is, to customary law. That was a particular feature of Ukrainian cities, which many historians frequently point out. V.B. Antonovych stressed that all Ukrainian Magdeburg cities were administered differently, not only the German Magdeburg cities, but also the Ukrainian ones [8, p.65]. Taking into account all the regional features of implementing Magdeburg Law in Ukrainian territories, many universal institutional provisions remained unchanged, in particular the authority, structure and procedure for forming local self-governing bodies (the town council was elected), the right to conduct own legal proceedings, the election of judges, fixing the territorial and administrative boundaries of the city, the boundaries of land plots for city inhabitants, the right of citizens to engage in trade, handicrafts, and shop

production, the municipal taxation system, feudal obligations, privileges to citizens, and the right of citizens to make changes in the organisation of municipal self-government and local authority.

It was Magdeburg Law and its letters that constituted the first suitable universal legislation in Europe to be applied in trade and craft centres. Magdeburg Law was based on the principle of community self-governance and contributed to the fact that Ukrainian cities for many centuries were situated in a political, cultural and legal environment common to other European cities. Such historical and legal experience is relevant when taking into account current European integration processes implemented by the Ukrainian state.

Local self-government acquired peculiar forms during the Cossack state, which was distinguished by its division into regiments and "sotnyas" (hundreds). Regiments and hundreds were both military and administrative territorial units that were built on military self-governance. The affairs of cities located on the Left Bank of Ukraine were the responsibility of the "uprava" (council), which also included a "ratusha" (executive body), headed by a municipal or Cossack "otaman" (leader/chieftain). An "uprava" was subordinated to a higher Cossack administration.

Ukrainians residing in cities sought to participate in local self-governance. After the battle of Zboriv fought between the Cossacks and the Polish army, a peace treaty was signed between Khmelnytsky and the Poles (Treaty of Zboriv, approved by the Sejm in late 1649), which entitled Orthodox burghers to participate in municipal governments. Local democracy was reflected in the Cossack "radas" (councils).

State self-governance was confirmed in the first Ukrainian (and the first European) Constitution drawn up by Hetman Pylyp Orlyk in 1710. It was designed to protect the state from arbitrary decisions made by government officials and to lay the foundations of modern local self-governance. It is important to note that municipalism as a system of administration, where an important role was assigned to local self-governance, is associated with the Cossack state. The historical and legal significance of Pylyp Orlyk's Constitution lies in the consolidation of democratic traditions, as well as European and Christian values, at the constitutional level.

A number of provisions in the Constitution regulated the procedure for resolving social issues, defining the basic principles of social policy. Thus, in order to determine the status of the General

Treasurer and his position within the ruling system, state treasury receipts from different sources and expenditures were regulated so as not to violate the rights of persons "whose services to the Motherland are not so important, namely: monks, priests, childless widows, elected and ordinary Cossacks, court servants and private individuals". The hetman took care that "excessive burdens, harassment and demands have not been placed upon ordinary and simple people, because such people leave their homes and depart, as a rule, to foreign countries beyond their native land". This norm is extremely relevant in modern Ukraine as there are not enough jobs and problems with employment, which entails more social protection. Mass migration in Ukraine and beyond its borders is a consequence of the complex political, social and economic situation in eastern Ukraine.

Another provision established and stated an inviolable rule, namely that Cossack widows, wives and orphans, Cossack farms and households run by women whose husbands were at war or serving in the army, would not be obliged to fulfil common mandatory obligations and would not be burdened with tax payments. It is worth highlighting this constitutional norm today, when the social rights of certain persons, who carry out their constitutional duty by defending their country in eastern Ukraine, are regularly violated. These persons are not exempted from certain material obligations and quite often, in the absence of proper state and local regulations, lose their right to property, housing, etc. No less important is the provision on tax collection procedures, during which there were many "violations and injustices". "Hetmanite autocracy" should have been limited by the general "*rada*" (council), which advised the hetman "on all kinds of public affairs": establishing a strict separation between the state treasury and the funds that were at the hetman's personal disposal, reviewing the landed estates occupied by men in charge and abolishing burdens imposed on the peasantry, abolishing public monopolies, leases, farming taxes and other burdens so hated by the people. This testifies to the birth of self-governance and democracy in decision-making during the formation of Ukrainian statehood. Unfortunately, when comparing the period of Pylyp Orlyk's Constitution and the current constitutional and legal regulations, we note that the rules, which were particularly underlined in the first constitution, are also seriously violated today. This is especially true in the government's weak control over state receipts and expenditures (today – State and local budgets),

tyrannical land magnates (today – the oligarchs), all-pervading corruption, etc.

As for other social rights, we should note the implementation of social and health protection measures during that period. Thus, Paul of Aleppo, who travelled with the Patriarch of Antioch through Ukraine to Moscow in 1654, provides the following description: "Know that over all the land of the Cossacks, in every city, in every village, houses have been built for the poor, the weak, and orphans, both on the edge and within the settlements, in which they can find shelter". In the 16<sup>th</sup> century, fraternal shelters were named "hospitals" (from the Latin "*hospitalis*" – hospitable). Fraternal hospitals were maintained at the expense of the community. In the cities, large workshops supported their own hospitals. Smaller workshops united to organize a single hospital. In some cities, hospitals were supported by customs fees charged for use of city ramparts, passage across bridges, ferry crossings, etc. In addition to hospitals that were supported by public finances, many hospitals in Ukraine were maintained thanks to funds bequeathed by wealthy residents. As to the number of hospitals in Ukraine in the 17-18<sup>th</sup> centuries, it is important to examine the information provided in Left-Bank Ukraine auditing books in the archives of the Little Russian Collegium. According to these books, in 1732, there were 118 hospitals in the Chernihiv regiment, 107 in Lubny, 29 in Myrhorod, 138 in Nizhyn, 42 in Poltava and 52 in Pereyaslav. All these hospitals had a custodial purpose [9].

After the annexation of Ukrainian territories by the Russian Empire, the functioning of such hospitals (almshouses) was managed at the imperial level. In 1712, Peter I, who wanted to rid the country of beggars, ordered the construction of almshouses for the aged and persons incapable of work in all the provinces. Initially, established municipal councils looked after them, and later the arrangement and management of almshouses were entrusted to the Public Guard Order established in each province; they were then transferred under the "*zemstvos*" (1864) and cities (1870). "*Zemstvos*" began taking care of orphans and offered shelter to other categories of citizens. After the Bolshevik Revolution of 1917, these institutions were redefined as "nursing homes", "boarding schools", and "shelters". Today, such social institutions are run by respective territorial communities and their representative bodies.

Subsequently, imperial local self-governing bodies were established in Ukraine. In 1838, estate self-governance was established for state and free



peasants in the form of a rural society, which had been applied to all the peasants since 1861. Rural societies (rural communities) applied rules for corporate ownership, including land. The most important problems in rural societies were resolved at rural meetings, and current affairs were managed by the village mayor elected at the meeting and by an appointed village clerk.

"Zemstvo" (land) reforms, carried out by Alexander II in 1864, had a significant influence on social life in Ukraine. In the European part of the Russian Empire, including Left Bank and Sloboda Ukraine, "zemstvo" institutions were established as regional self-government bodies. "Zemstvo" administrations were responsible for ensuring the livelihood of the local population: food supply, maintenance of roads, buildings, structures, "zemstvo" charitable and medical institutions, development of public education, and assistance to the sick and the poor. Local authorities generally had clearly defined social and service functions, and despite the negative influence of the unification with Russia for Ukrainian local self-government, they had some positive impact on resolving local problems and enhancing the well-being of local residents.

Municipal affairs were directly supervised by a municipal council that comprised preparatory, executive and other commissions. According to the City Regulations of 1870, urban public administration was founded on the principle of separation of powers, i.e. the powers to govern should be distributed between the Parliament and the Executive, namely the "duma" and the "uprava", respectively. Having subordinated the administration to the "duma", the law also provided for the influence of the "uprava" on decisions approved by the "duma" in favour of the "uprava" and municipal mayors as bodies accountable to the "duma". The mayor's real authority was much greater than that provided for by law. Thus, the head of the collegial body was able to ensure that municipal affairs were resolved in a favourable way.

When reforming municipal administration, the tsarist government gave local governments the right to self-governance, but made sure that they did not infringe on central authority and deprived them of the right to engage in political affairs. As a result, public administrations functioned as "economic self-government" entities. Government supervision was limited to monitoring the legality of municipal self-government activities without interfering in their economic activity. However, there were instances when self-governing entities acted

against the unlawful actions of the administration, which led to conflicts. In general, the implementation of this reform increased urban incomes, and the government was able to transfer a significant part of onerous expenses to self-governing communities.

Local self-government was mentioned in the Constitution of the Ukrainian National Republic (UNR) - Statute on the state system, rights and freedoms of the UNR – on April 29, 1918. The text of the Constitution reads as follows: "Without violating its authority, the Ukrainian National Republic grants the right to extensive self-government to its lands, "volosts" and communities, while observing the principle of decentralization. Local affairs of all kinds shall be administered by Councils and Executive Boards elected by communities, "volosts" and lands. They shall constitute the only direct local authority: the ministers of the Ukrainian National Republic shall control and coordinate their activities directly and through appointed officials, without interfering in affairs that are within the competence of the Councils and Executive Boards, and all disputes related to such cases shall be resolved by the Court of the Ukrainian National Republic". Thus, not only was the concept of self-governance used to settle locally important issues, but decentralization was mentioned as a condition for the existence of local self-governance and the proper fulfillment of its functions, including social ones.

During the Soviet period, locally important issues were settled directly by the state. In the 50-60ies, local councils were viewed as organs that were evolving into communal civil governing entities, and therefore they should function not only as organs representing state authority, but also as local or public self-governing bodies. Their competencies included: implementing all the resolutions adopted by the higher authorities, raising the economic and cultural level, managing all the public administrations subordinate to them, and resolving other locally important issues. However, state centralism resulted in local issues being completely subordinated to the great-power interests that blocked any manifestation of local self-governance with pronounced Ukrainian features.

According to Professor V.M. Kampo, it has taken centuries to construct a modern system of local self-government in today's Ukraine, often using the trial-and-error method. Today, self-governance is an accumulation of positive factors during major spikes in democracy and its institutions, as well as negative factors remaining after centuries of imperial rule and decades of Soviet

totalitarianism. Local self-government has been one of the most important factors in the development of Ukrainian statehood, preserving it as a whole [10, p.564].

### **Constructing a local self-government entity modeled on the European prototype: ways to overcome existing obstacles**

However, local self-governance is a sensitive, changing, even reactive "affair". It has features linked to historical moments, the type and status of a certain political system, society and government inherent to a particular country or group of countries, national traditions, legal culture, and the people's political will. The modern Ukrainian experience of forming municipal authority testifies to the possibility of synthetically merging some Soviet elements and a new national democratic model of local self-governance. In Ukraine, we see that new municipal systems with a certain political orientation are gradually moving towards classical European models. At the same time, we cannot fail to notice several actual difficulties in implementing the European model of local self-government in Ukraine [10, p.564].

We believe that further development of local self-governance, based on its functional role, namely the resolution of a wide range of locally important issues, requires, first and foremost, a legislative definition and specific means for their qualitative and timely resolution.

The European Charter of Local Self-Government of 1985, defining local self-government as the right and ability of local self-government bodies, acting within the limits of the law, to regulate and manage a significant share of public affairs under their own responsibility and in the interests of the local population, but does not detail what exactly needs to be understood as the essential part of public affairs.

Therefore, by regulating the organisation and functioning of local self-government, member states try to determine the concept of "local issues" at the legislative level and consolidate a list.

We can agree with Professor M.O. Baymuratov that the absence of a legislative definition of local issues demonstrates indecision on the part of the state and its reluctance to lose all levers of control over important social processes at the local level. After all, the definitive characteristic of locally important issues established at the legislative level will contribute to a clearer delimitation of state and local self-government authority and the establishment of a full-fledged regulatory and competence base of local democracy. It is precisely this ab-

sence at the legislative level that reduces the meta concept of a full-fledged local government in Ukraine to simple declarations [11, p.115].

Therefore, in the process of further development of municipal authority in Ukraine, it is extremely important to outline a number of locally important issues and, following the example of many countries (Austria, Belgium, Bulgaria, Great Britain, Denmark, the Baltic States, Ireland, Iceland, Spain, Italy, Slovenia, Hungary, etc.) to consolidate a list at the highest legislative level. This will fully comply with European practice, promote European integration and become one of the most important guarantees for the proper functioning of local self-government and the large range of rights of territorial communities.

As to the criteria for defining such local issues, they consist in the fact that the state deals with citizens, while local self-government deals with residents. Ukraine must implement in municipal practice the provisions of the Convention on the Participation of Foreigners in Public Life at Local Level, which grants permanent resident foreigners the right to vote and stand for elections in local self-government bodies provided that they fulfil the same legal requirements as apply to ordinary citizens and have been lawful and habitual residents in the given State for five years preceding the elections. Residency requirements have been reduced in some countries. Thus, the characteristic feature of local elections in Sweden is that not only Swedish citizens, but also citizens of the EU, Norway, Iceland, as well as other persons residing permanently in Sweden, have the right to participate in such voting, if they have resided in the country not less than three years before the actual election day [12].

In a number of countries, the right to vote and to be elected is differentiated depending on the person's status. Thus, in accordance with the Constitution of Hungary (Article 23) [13], every adult citizen of an EU Member State, who is a permanent resident of Hungary, is entitled to vote and to be elected during elections for local deputies and mayors. Adults with refugee status, immigrant status or persons with a permanent residence permit in Hungary have only an active right to vote (right to elect) for local deputies and mayors. Similar norms are enshrined in the constitutions of Latvia (Article 101) [14], the Federal Republic of Germany (Article 28) [15], Estonia (Article 156) [16], Finland (Article 14) [17], Lithuania (Article 119) [18], and others.

On the other hand, there is a practice that allows foreigners to implement active and passive

electoral law on equal terms with the citizens of a given country. A striking example is the Slovak Constitution (Article 30) [19], which states that foreigners residing in the Slovak Republic are entitled to elect and to be elected to higher self-government bodies in communities and local self-governments. Article 5 of the Slovak Law – "On Elections to Municipal Communities" – states that voting lists can include foreigners who reside in the territory and meet certain requirements. According to Articles 2 and 7 of the Slovak Law "On Elections to Self-Governing Regional Bodies", the list of voters includes foreigners who have permanent residency in the region and are over eighteen years of age.

We hope that, in the future, in the context of European integration and the implementation of the basic principles of local self-governance, Ukraine will also strengthen the status of foreigners with regard to the right of all citizens to participate in local self-government.

This issue is also being activated in the context of the application of the principle of subsidiarity. In accordance with the founding principles of the European Charter of Local Self-Government (Article 4, paragraph 3), the Recommendation of the Committee of Ministers to the Council of Europe No.R(95)19 on the application of the principle of subsidiarity (adopted on October 12, 1995 at the 545<sup>th</sup> meeting of deputy ministers) [20], as a rule, municipal functions are generally carried out by authorities who are most closely in touch with citizens. When assigning a function to another body, it is necessary to take into account the scope and nature of the task, as well as efficiency and cost-cutting requirements.

The current Basic Law of the Federal Republic of Germany of 1949 stipulates that territorial units in the Federal Republic of Germany include lands, districts and communities. Article 28 determines that the constitutional structure of the lands of the Federal Republic of Germany must be in line with the basic principles of a republican, democratic and social legal state. In the lands, districts and communities, people must have appropriate representatives, who are duly elected through general, direct, free, equal and secret elections. In communities, elected representative bodies may be replaced by general municipal meetings. Municipalities should be guaranteed the right to regulate, within the law, all local affairs on their own responsibility. Municipal unions also enjoy self-government within the limits of their tasks, as established by law. Self-governance also guarantees the right to financial responsibility, such as tax

revenues ensuring a municipality's economic sufficiency and the establishment of tax rates [21].

According to Article 164 of the Constitution of the Republic of Poland, the main unit of territorial self-governance is the "*gmina*" (commune), which performs all the tasks related to territorial self-governance not enshrined in other units of territorial self-governance [22]. The "*gmina*" has the status of a legal entity. It performs public tasks on its own behalf and under its own responsibility. The "*gmina*" is responsible for all public affairs of local importance, including such areas as municipal economy, education, culture, utilities, health care, public order, etc. As the analysis of the powers of Polish municipal authorities has demonstrated, the list of such tasks is not exhaustive and shows a tendency to expand.

In defining such principles as a priority in the further development of local self-governance, legislators and representatives of the executive branch should realize that the following developments are inevitable: transfer to the local level of all powers that can be implemented most effectively by municipal authorities, extension of their own authority and minimization of delegated authority, changes to state budgetary policy, reform of local government bodies and creation of own executive bodies within regional self-governing bodies in the context of the decentralization of power.

The legal essence of local self-governance is manifested in different municipal activities aimed at resolving local issues, and hence improving the people's well-being. However, it is necessary to take into account the fact that Ukrainian communities are not always self-sufficient and are unable to resolve local problems promptly and efficiently for different objective reasons. The way out of such a situation may be interaction between local government entities, in particular the implementation of different forms of cooperation among territorial communities.

The Recommendation of the Regional Governments of Europe 221 (2007) on the institutional framework for inter-municipal cooperation (June 1, 2007) states that the development of inter-municipal cooperation is related to the numerous challenges faced by local authorities, such as requirements of efficiency in modern societies undergoing decentralization and globalization, and is needed in order to respond to increasingly complex and massive social demands, as well as to the needs of a more mobile or, sometimes, more dispersed population (in large cities centres, small municipalities due to communal fragmentation, overly dispersed rural population, etc.) [23].

In the context of strengthening local self-governance and promoting the decentralization of public administration in Ukraine, the process of creating self-sufficient territorial communities through voluntary amalgamation is ongoing. However, this process is relatively slow. An alternative way of strengthening the foundations of local self-governance in Ukrainian communities is inter-municipal cooperation, which has significant relative advantages over the merger of communes or the privatization of public services. Mergers (amalgamation of communities) sometimes encounter traditional resistance from the local population, and privatization of public services is not always sufficient to overcome the lack of public structures in managing and resolving local issues.

Today, communities cooperate actively in the medical field, care for the elderly, unemployment assistance, water supply and social security. Of course, it would be advisable to improve cooperation in such fields as common administration, planning, building permits, environmental protection, integration of immigrants and local self-governance.

The Swiss Federation has had several positive experiences in municipal partnerships. These programmes cover construction and town planning, whereby about half of the communities need external assistance. A significant number of communities are looking for partnerships in transport, legal services and computer technology. Privatization and outsourcing have also become attractive spheres of partnership [24]. It is precisely such a state of affairs that contributed to the amendment of the Cantonal Constitution concerning the creation of inter-municipal associations aimed at strengthening cooperation between communities and improving governance efficiency.

We should also consider Japan's experience, whereby there is a procedure for merging the efforts of neighboring municipalities in order to resolve cases related to the provision of quality public services to residents, regulated by the Ministry of Self-Government Affairs. Cooperative or advisory boards are created. At present, almost 90 %

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of primary municipalities are involved in such cooperation.

## Conclusion

This issue has been actualized in the context of the conflict in eastern Ukraine. A significant number of Ukrainian citizens have been forced to leave their place of permanent residence and move to other regions. Such persons have received the status of internally displaced persons who require significant state support. It is in order to ensure proper living conditions for the IDPs that public authorities and local self-government bodies should work together, and different forms of cooperation should be established at the level of territorial communities.

The historical and legal study of the formation and development of local self-governance in Ukraine suggests that local self-governance is by no means an alternative to strong state authority, but the exact opposite – effective local self-government is the sign of a strong state. In times of crisis, local self-governing communities are responsible for resolving vital issues at the local level, and thus contribute to preserving and strengthening a unitary Ukrainian state; they constitute a stabilizing factor and are able to relieve social tensions.

Only by extending the rights of local self-government, decentralizing powers and authority, promoting civic initiatives, and activating civil society can Ukraine overcome the negative consequences of corruption, prevent federalization and ensure the full integration of Ukraine into the European Community.

## Conflict of interest

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