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CONSTITUTIONAL AND LEGAL BASIS OF TERRITORIAL ORGANIZATION PUBLIC AUTHORITIES IN THE COUNTRIES OF CENTRAL AND EASTERN EUROPE

Abstract. *The article is devoted to the study of the constitutional and legal basis of the public authority territorial organization in the countries of Central and Eastern Europe. The legal framework governing regional and local government is described, in particular, attention is focused on the structure of the regulatory basis of municipal government, it is determined that the main source in the formation of legislation in the field of local government was the European Charter of Local Self-Government. In addition, the system of territorial organization of regional and local authorities, which was formed as a result of the reform of the administrative-territorial structure in the early 2000s, taking into account the European requirements of NUTS, is covered.*

Keywords: *territorial organization of power, decentralization, local self-government, regional development.*

Formulation of the problem. Ukraine's chosen political course for European integration necessitates focusing on European standards of public authority, including municipal power. Local self-government in Central and Eastern Europe, which is experiencing a period of democratic transit, is particularly dynamic. A striking example of successful local government reform among the countries of the region is Poland, Hungary and the Czech Republic, whose experience is important for further modernization of local self-government and territorial organization of power in Ukraine in the context of European integration and democratization.

Analysis of recent research and publications. Domestic jurisprudence has traditionally paid considerable attention to the constitutional and legal problems of the local self-government organization and functioning in the context of foreign experience, as well as comparative studies of local self-government. In this regard, it is worth remembering the works of such scientists as M. O. Baimuratov, O. V. Batanov, I. I. Bodrova, P. M. Lyubchenko, S. H. Seriohina, V. L. Fedorenko, O. M. Chernenzenko. However, the constitutional principles of local self-government in individual countries have been the subject of research by domestic authors only since the early 2000-s. At the same time, there is an urgent need to reform the territorial organization of government and local self-government in Ukraine with concrete proposals from foreign experience, especially from the practice of those countries that have managed to bring the national system of local democracy to EU standards.

The purpose of the article is to analyze the constitutional and legal basis of the public authorities territorial organization in the countries of Central and Eastern Europe.

Presentation of the main research material. The constitutions of Poland, Hungary and the Czech Republic pay significant attention to issues of local self-government. This is clearly evidenced by statistics: in the Constitution of Poland in 1997, articles on local self-government account for 4.1% of the total volume of this document (10 of 243 articles) [10], in the Constitution of Hungary in 2011—4.8% (5 of 105 articles) (11), and in the Constitution of the Czech Republic in 1992—6.2% (7 of 113 articles) (9). However, any constitution due to the limited scope, features of the legal nature and functional purpose can

not fully establish the legal status of local self-government. On the one hand, its provisions are general in nature and need to be developed and detailed at the level of laws and bylaws, on the other hand – although issues of local self-government belong to the internal affairs of sovereign states, but as members of the world community, they have to take into account their obligations under certain international legal treaties.

Accordingly, the second level of the legal basis of local self-government in Poland, Hungary and the Czech Republic is international law. It should be noted that the constitutions of these countries have a slightly different attitude to the place and role of international legal acts in the national legal system. Thus, according to Part 1 of Art. 87 of the Constitution of Poland, the sources of the law of the Republic of Poland are all ratified international treaties [10]. Instead, the Constitution of the Czech Republic in Art. 10 recognizes only ratified and promulgated international treaties on human rights and fundamental freedoms directly valid and priority over domestic law, [9]. Finally, Article E of the Basic Provisions of the Hungarian Constitution mentions the binding nature of only those treaties which have been adopted within the EU and approved by at least two-thirds of the members of the Hungarian Parliament [11].

Among the international legal acts that form the legal basis of local self-government in Poland, Hungary and the Czech Republic, first of all, is the European Charter of Local Self-Government of 1985 [6]. Poland ratified this document on March 1, 1994 – without reservations, Hungary – on July 1, 1994, without reservations, the Czech Republic – on September 1, 1999, with reservations regarding paragraph 5 of Art. 4, item 2. of Art. 6, paragraph 2 of Art. 7, paragraphs 3, 5, 6, Art. 9. Today, the Charter is a fundamental document aimed at establishing and protecting local self-government as a fundamental principle of the democratic constitutional order of European countries. It should be noted that only Hungary (7 June 2010) ratified the Additional Protocol to the European Charter of Local Self-Government from the three countries under study, while Poland and the Czech Republic have not even signed it yet [4].

The third level of the legal basis of local self-government in Poland, Hungary and the Czech Republic are the laws.

In Poland, the legal basis of local self-government is mainly the laws adopted during the reform of the territorial organization of power in the state, carried out during the last ten years of the twentieth century: «On communal (territorial) self-government» of March 8, 1990 [16]; «On county self-government» of June 5, 1998 [15]; «On self-governing employees» of March 22, 1990 [12]; «On the commune guard» of August 29, 1997 [13], etc.

In turn, the legal regulation of local self-government in the Czech Republic is carried out by the following laws: «On generals (municipalities)» of April 12, 2000 № 128/2000 [17]; «On the edges (regional formations)» of April 12, 2000 № 129/2000; [18]; «On Support of Regional Development» of June 29, 2000 № 248/2000 [19].

The laws governing local self-government in Hungary include: CLXXXIX «On Local Self-Government» 2011 [2]; XXI «On regional development and planning» 1996 [1]; CXXVIII «On the capital Budapest» 2013 [3].

It should be noted that in all three countries studied, the main developer of draft laws on local self-government is the government, which acts in close contact with local government representatives and the expert community. Thus, in Poland there is a Joint Commission of Government and Territorial Self-Government (KWRiST), the main task of which is to address issues related to the functioning of local self-government and state policy on local self-government, as well as issues related to local self-government within the EU and international organizations of which Poland is a member. All legislative proposals on local self-government are submitted to the Seimas only after coordination of positions within KWRiST.

Before proceeding to the description of the local self-government territorial basis in Poland, the Czech Republic and Hungary, it should be noted that after the collapse of the «socialist camp» each of them determined its geopolitical orientation to achieve EU membership. With this in mind, they reformed the territorial organization in accordance with the requirements of the Nomenclature of Territorial Units for Statistics (NUTS), which facilitates statistical analysis of regions and helps to clearly identify regions of different levels of development. NUTS has five levels, three of which (NUTS 1–3) are regional and two (NUTS 4–5) are

EU local regional statistics units. NUTS 1 includes the largest regions in the structure of EU member states or regions already grouped into administrative-territorial units, such as in Germany, France, Great Britain. NUTS level 2 is the most acceptable space for implementing EU regional policy; NUTS 3 level is optimal for the implementation of comprehensive socio-economic special programs of interregional cooperation. Levels in the NUTS system are not in all cases identical to the administrative-territorial structure of the EU Member States. However, it is the level of NUTS 2 that requires the fullest possible compliance with the unification of the administrative-territorial division of the Member States in accordance with the criteria of the regional division of NUTS 2 EU, as the fulfillment of this condition depends on the provision of funding and grants from EU funds. However, NUTS 2 compliance was not a prerequisite for Central and Eastern European countries preparing to join the EU (including Poland, Hungary and the Czech Republic).

The second priority of reforming the system of administrative-territorial organization of the studied countries was the implementation of the subsidiarity principle. At the same time, first of all, attention was focused on strengthening the socio-economic potential of administrative-territorial units and creating capable communities, ie, what is currently provided by the Concept of reforming local self-government and territorial organization of power in Ukraine.

The modern administrative-territorial system of Poland was introduced on January 1, 1999, when the previous two-tier division, which had existed since 1975, was changed to a three-tier division. As a result of the reform, 16 voivodships, 308 rural and 65 urban counties were created. The commune became the basic link of the territorial organization of Poland. At the same time, as a result of the reform, the number of gminas as basic self-governing units was reduced by almost four times – from the existing 9.5 thousand in 1955 to 2,489 thousand in 1999.

It should be noted that in Poland, in resolving the issue of reforming the administrative-territorial system, one of the most controversial issues was the ratio of state and self-government in the voivodship. Some authors argue that the new province is similar to the

French departments and regions: it is a self-governing structure of the state, represents the interests of a particular region and at the same time hinders the spread of ideas about autonomy [7, p. 21–22].

Since then, the administrative-territorial structure of Poland has undergone only minor changes: in 2002, seven new counties and one gmina were created, and at the same time 12 gminas were liquidated; in 2003, one county was liquidated (later restored in 2013). In 2010, 1 gmina was formed, in 2015, one gmina was liquidated. In addition, almost every year there is a slight adjustment of the boundaries of voivodships, counties and gminas.

Currently (as of January 1, 2021) there are 2,478 gminas in Poland, including 1555 rural, 621 urban-rural, as well as 302 urban, incl. 66 city as a county [8]. The average population of the commune is 5–8 thousand people (the smallest commune – 1 thousand, the largest – 20 thousand inhabitants). The vast majority of gminas have a population of 5 to 40 thousand, in about 100 gminas there are from 40 to 100 thousand and in 45 – more than 100 thousand inhabitants. At the same time, less than 2,000 people live in 20 rural communes.

Unlike Poland, the administrative-territorial structure of Hungary and the Czech Republic has a two-tier division. At the same time, the new territorial structure of the Czech Republic reflected the principles of such statistical regions of the EU formation as NUTS 2 and NUTS 3, which are aimed at the development of weak, depressed regions.

Territorial reforms in the Czech Republic began in December 1997. At that time, 14 higher territorial units of self-government were established, and they became the basis for regional policy in the country after its accession to the EU (NUTS 2, NUTS 3 for statistical purposes) analyzes).

At first glance, the territorial structure of the Czech Republic is quite simple. According to Art. 99 of the Constitution of the Czech Republic, the country is divided into obci (6258), which are the main territorial self-governing units, and the provinces (14), which are the highest self-governing units. According to Art. 1 of the Law «On Obci» of April 12, 2000 № 128/2000 the municipality is the main territorial community of citizens, which forms a territorial unit limited by the boundaries of the territory of the municipality. A municipality can

acquire the status of a city if it has at least 3,000 inhabitants and such a decision is made by the chairman of the Chamber of Deputies.

However, on closer inspection, the territorial structure of the Czech Republic is complex and ambiguous. The fact is that the administrative division of this state consists of four or even five levels. At the first level, the Czech Republic is divided into 13 regions (Czech kraj, plural – kraje) and the capital (Czech hlavní město). In turn, the provinces (but not the capital) are divided into 77 districts (Czech okres (y)); creating the so-called old second level of administrative division. After the introduction of communities with expanded powers, districts ceased to be administrative units, but they continue to be used as territorial units mainly for statistical purposes and public administration. Instead, the so-called new second level of administrative-territorial division of the Czech Republic consists of 205 members with extended powers (Czech. Obce s rozšířenou působností), into which the districts are divided. At the third level there are 393 communities with an authorized community (Czech: Obce s pověřeným obecním úřadem), and at the lowest, fourth level – 6258 communities with delegated powers (Czech obec, obec se základním rozsahem přenesené působ).

As we can see, the complication of the administrative-territorial structure of the Czech Republic is due to the ranking of communities (promises) on three levels. At the same time, local self-government is carried out in all the above-mentioned administrative-territorial units, except for districts.

Characterizing the territorial basis of local self-government of Hungary, it should be noted that in accordance with Art. F of the Basic Law, the territory of Hungary consists of the capital, its districts, counties, cities and communities. Local self-government is carried out at two levels – district and municipal, ie municipal government is present in the capital and its districts, districts, cities and communities.

Hungary's Law on Local Self-Government, adopted in 2011, has led to important changes in the country's territorial organization. Today, Hungary includes 19 counties – megyék (Hungarian – megyék) and 3175 communities (Hungarian – települések). The level of local communities consists of 2,863 municipalities – község (Hungarian – község), 265 cities, 23 cities with district rights. In

addition, in order to overcome the problem of a large number of communities, a new administrative structure of districts (sometimes called microregions in the literature) was introduced – *járás* (Hungarian – *járás*). In Hungary, there are 175 districts in the districts and 23 in the capital.

The category of «cities with district rights» provided by the Hungarian Law on Local Self-Government includes cities that provide public services not only for their residents, but also for those who live in the adjacent territory. Such cities are traditionally provincial and have a population of at least 50,000. Today, there are only 23 municipalities that meet such requirements. From an administrative point of view, a two-tier management system is not beneficial for the city, as most districts exist as separate municipalities, and this trend extends to almost all or most of the city. The level of fragmentation is obvious, as more than half of the communities (over 1,700) have less than 1,000 inhabitants, about a third have less than 500, and about 100 settlements have less than 100. At the same time, almost 60% of the population lives in 139 cities with more than 10,000 inhabitants.

Note that the reform of the public power territorial organization in the studied countries was based on the principles of local autonomy and the restoration of the historical rights of territorial communities. In particular, the laws of Hungary and the Czech Republic give the settlement the right to declare itself self-governing. Thus, in 1990 the number of municipalities in Hungary doubled, and in the Czech Republic this process continues to this day [5, p. 93].

Conclusions. The territorial basis of local self-government in the studied countries is the administrative-territorial structure of the state, with the basic unit of local self-government -the community (commune, *kozsheg*, *obets*), which does not coincide with the borders of settlements.

All the studied countries face the problem of territorial disparities of local self-government caused by uneven development of certain territories, the presence of depressed regions, rapid urbanization in combination with the decline of rural settlements and more. As a result, the government faces a dilemma: on the one hand, the optimization of public administration dictates the need to consolidate territorial communities in order to increase their capacity, and on the

other – excessive consolidation threatens the nationalization of local government and the loss of «accessibility».

Disproportions in territorial development lead to the emergence of territorial units with dual status in all the countries studied – cities with the rights of a district (as in Hungary) or communities with extended powers (as in the Czech Republic). This, in turn, puts on the agenda the problem of internal division of such units for better governance, as well as the problem of finding optimal forms of direct democracy in large communities (sometimes hundreds of thousands of inhabitants).

The territorial basis of local self-government presupposes, among other things, the existence of approximately the same financial capacity of territorial units of the same level. However, in the conditions of the above-mentioned disparities, it is not yet possible to ensure this, as well as to fully comply with the requirements of NUTS for the standardization of territorial units. No wonder Hungary in 2013 refused to follow these requirements, citing the inability to comply with the requirements of «good governance» in the current socio-economic conditions.

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А. С. Чиркин

Конституционно-правовые основы территориальной организации публичной власти в странах Центрально-Восточной Европы

***Аннотация.** Статья посвящена исследованию конституционно-правовой основы территориальной организации публичной власти в странах Центрально-Восточной Европы. Охарактеризована правовая база, регулирующая вопросы регионального и местного управления, в частности, акцентировано внимание на структуре нормативной основы муниципальной власти, определено, что основным источником при формировании законодательства в сфере местного самоуправления выступала*

Европейская хартия местного самоуправления. Кроме того, освещена система территориальной организации региональной и местной власти, которая была сформирована в результате реформы административно-территориального устройства в начале 2000-х годов, с учетом европейских требований NUTS.

Ключевые слова: *территориальная организация власти, децентрализация, местное самоуправление, региональное развитие.*

А. С. Чиркін

Конституційно-правові засади територіальної організації публічної влади в країнах Центрально-Східної Європи

Анотація. *Стаття присвячена дослідженню конституційно-правових засад територіальної організації публічної влади в країнах Центрально-Східної Європи. Охарактеризовано правову базу, яка регулює питання регіонального і місцевого управління, зокрема, акцентовано увагу на структурі нормативної основи муніципальної влади, визначено, що основним джерелом при формуванні законодавства у сфері місцевого самоврядування виступала Європейська хартія місцевого самоврядування. Крім того висвітлено систему територіальної організації регіональної і місцевої влади, яка була сформована внаслідок реформи адміністративно-територіального устрою на початку 2000-х років, з урахуванням європейських вимог NUTS.*

Зазначається, що найбільш розлого і системно питання місцевого самоврядування регламентовані Конституцією Польщі, тоді як Конституція Чехії, а тим більш Угорщини в даному аспекті є значно більш лаконічними й уривчастими. Проте легальної дефініції місцевого самоврядування не містить жодна з трьох досліджуваних конституцій. При цьому в Угорщині, як і в Україні, діє єдиний закон про місцеве самоврядування, тоді як у Польщі та Чехії організації місцевого самоврядування на кожному з рівнів територіального устрою присвячено окремі закони.

У роботі стверджується, що фінансову основу місцевого самоврядування у Польщі, Угорщині та Чехії становлять власні доходи, а також міжбюджетні трансферти, при цьому муніципалітети залишаються фінансово залежними від центрального уряду. В усіх трьох країнах значна увага приділяється фінансовому контролю за діяльністю місцевого самоврядування. Установлено, що матеріальну основу місцевого самоврядуван-

ня названих країн становить комунальна (муніципальна) власність. Особлива частина майна самоврядування — це так зване фондове майно, яке потрібне для виконання виключних повноважень місцевого самоврядування і як таке має реєструватися окремо від іншого майна. У законодавстві досліджуваних країн досить чітко прописано матеріальну базу самоврядування, проте посилення муніципальної власності, як і місцевих бюджетів, залишається актуальним.

Висвітлюється, що територіальна основа місцевого самоврядування досліджуваних країн формується на основі адміністративно-територіального поділу держави. При цьому в Польщі цей поділ є триланковим, тоді як в Угорщині та Чехії — дволанковим. Проте базовою одиницею місцевого самоврядування в усіх трьох державах визнається громада (гміна, кьозшег, обець); саме на цьому рівні реалізується переважна більшість функцій і повноважень місцевого самоврядування.

На досвіді досліджуваних країн доведено, що курс на євроінтеграцію зумовлює необхідність узгодження адміністративно-територіального поділу держави з вимогами системи NUTS (Номенклатури територіальних одиниць для цілей статистики), що діє в ЄС. Удосконалено розуміння моделей місцевого самоврядування в досліджуваних країнах; продемонстровано, що у Польщі модель місцевого самоврядування на всіх трьох рівнях за характером розподілу первинної компетенції є двоїстою, а в Угорщині та Чехії — троїстою.

Ключові слова: територіальна організація влади, децентралізація, місцеве самоврядування, регіональний розвиток.