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CURRENT STATE AND PROSPECTS OF ADOPTION OF THE MUNICIPAL CODE OF UKRAINE

***Abstract.** The article is devoted to the study of the current state and prospects of adoption of the Municipal Code of Ukraine. The article highlights various views of scholars on the idea of codification of municipal legislation at the national level in Ukraine. The current state and problematic issues of adoption of the Municipal Code of Ukraine with due regard for the reform processes of local self-government are revealed. The issue of adoption of the Municipal Code of Ukraine remains very relevant today. Despite the fact that the opinions of many scholars on the expediency of introducing this document are divided, it is still worth noting that the Municipal Code of Ukraine is an important document, which should become a single set of rules, which will allow completing decentralisation, creating transparent and effective partnerships between central government and local*

communities. Therefore, today there is an important task to develop and adopt a high-quality document that will meet the needs of the present.

Keywords: *local self-government, Municipal Code of Ukraine, local self-government reform.*

Statement of the problem. At the present stage of Ukraine's state development, improvement of local self-government is an important factor in further democratisation of public life. Its legal and regulatory framework is of great importance for the effective functioning of the local self-government system.

Today, Ukraine has a large body of legislation regulating the activities of local self-government. However, gaps, duplication of legal provisions, and terminological confusion are significant obstacles to further democratisation of local self-government. Therefore, one of the ways to solve these problems is to adopt the Municipal Code.

Analysis of recent research and publications. The idea of codifying municipal legislation at the national level has existed in Ukraine for quite some time. However, the views of scholars on how this codification can be carried out differ. Some scholars believe that the Municipal Code of Ukraine should be a set of norms on all important issues of local self-government. P. A. Tkachuk and O. B. Kachmar believe that the need for codification of municipal law is due to the fact that the current state of the regulatory framework of local self-government does not always allow the population to get acquainted with municipal regulations and use them, which, on the one hand, reduces the effectiveness of their implementation, and on the other hand, does not allow residents to protect their municipal rights, control the work of local self-government bodies and officials, etc. In the article, they talk about the need to adopt the Municipal Code of Ukraine and the Ukrainian Charter of Local Self-Government [5]. N. V. Mishina and K. V. Holovko in their scientific work advocated the absence of the need to develop and adopt the Code of Laws on Local Self-Government in Ukraine (Municipal Code of Ukraine). They noted that when codifying the municipal legislation of Ukraine, in terms of the scope of regulatory material covered by the codification, preference should be given to institutional codification through further improvement of the Law of Ukraine «On Local Self-Government in Ukraine» [4].

It is worth noting that the expediency of adopting the Code of Laws on Local Self-Government in Ukraine (in other words, the Municipal Code of Ukraine) has been the subject of scientific and practical discourse since the 2000s. This idea has been repeatedly expressed by various scholars, for example, by P. A. Trachuk in his monograph on «Administrative and Legal Principles of Reforming Local Public Authorities in Ukraine» [6].

Such a low level of interest of Ukrainian scholars in further development of the issues of the Municipal Code of Ukraine can be justified by the lack of appropriate political will. After all, the draft of the relevant legal act was submitted to the Parliament of Ukraine only once – in 2000. This is the draft Code of Laws on Local Self-Government in Ukraine (Municipal Code of Ukraine), reg. No. 6287 of 13 December 2000 [3].

Many questions can be raised about the quality of this document, but at that time, the very fact of raising the issue of creating this Code was important.

The purpose of the article is to reveal the problematic issues of adoption of the Municipal Code of Ukraine and further development of local self-government in modern realities.

The main material is presented. Analysing the single draft of the Municipal Code of Ukraine, should be noted that, first of all, the lack of certainty in the name of the Code attracts attention. The title «Code of Laws on Local Self-Government in Ukraine» is given first, followed by the title «Municipal Code of Ukraine» in brackets. If the subjects of the legislative initiative – the authors of the Draft – could not decide on the name, this may indicate that they do not fully understand either the scope of legal regulation of the future Code or its significant differences from the current Law 'On Local Self-Government in Ukraine'. Even if there are other considerations, the «double» title of the draft law is not typical for lawmaking in Ukraine, and this uncertainty and ambiguity is an argument against, rather than in favour of, the adoption of the Municipal Code of Ukraine. It should be noted that the Ukrainian legal literature currently has an approach according to which most municipal law experts write not about the «Code of Laws on Local Self-Government in Ukraine», but about the «Municipal Code of Ukraine». However, firstly, it seems more

appropriate to use the name by which the draft Law of Ukraine under discussion can be found, if necessary, and secondly, the name «Code of Laws on Local Self-Government in Ukraine» is much more consistent with the thesaurus of the current legislation of Ukraine, unlike the name «Municipal Code of Ukraine».

A review of the content of the first articles of the Draft Code of Laws on Local Self-Government in Ukraine gives grounds to formulate a number of comments in the context of the study. First of all, the authors of the Draft consider it necessary to apply the concept of 'legislation' in a narrow sense when it comes to the municipal legislation of Ukraine. In Article 5 «Municipal Legislation of Ukraine», part 1 establishes that «the legal status of local self-government in Ukraine is determined by the Constitution of Ukraine, this Code and other laws of Ukraine», and part 3 states that «international treaties on local self-government, ratified by the Verkhovna Rada of Ukraine, are an integral part of the municipal legislation of Ukraine». Despite this belief of the Draft's authors, their opinion can hardly be shared: Section 1 argues that the municipal legislation of Ukraine is unlikely to be complete without taking into account the legal acts of local self-government entities. The draft is interesting in that its authors in Article 1 proposed a definition of the concept of the Code of Laws on Local Self-Government of Ukraine: «The Code of Laws on Local Self-Government is the main comprehensive legislative act that, in accordance with the Constitution of Ukraine and generally recognised norms of international law, regulates social relations related to the resolution of socio-economic, communal and other issues of local importance by citizens of Ukraine – residents of villages, towns and cities» [3].

This definition raises many questions. First, a substantive remark. The authors of the Draft narrow the subject matter of municipal law too much, trying to establish that the Code of Laws on Local Self-Government in Ukraine will regulate «social relations related to the solution of socio-economic, communal and domestic and other issues of local importance by citizens of Ukraine – residents of villages, towns and cities». The desire of the Draft's authors to depoliticise local self-government is obvious, but at the present stage, it is hardly

appropriate to focus on the socio-economic, communal, and domestic components when it comes to local self-government.

Second, a formal remark. The authors of the Draft did not refer to the features of codified acts, codification, codification activity, as evidenced by the absence of mention of them both in the above definition and in the provisions of Article 2 «Objectives of the Code of Laws on Local Self-Government in Ukraine»: «The Code of Laws on Local Self-Government is aimed at regulating, protecting and strengthening local self-government in Ukraine, the principles and guarantees of its implementation, and protecting the rights of Ukrainian citizens – members of territorial communities to full and comprehensive participation in solving local affairs within the limits defined by the Constitution, this Code and other Laws of Ukraine» [3].

Finally, the authors of the Draft did not follow the hierarchy of legal acts in Ukraine when drafting the regulations. Thus, Article 6 «Inconsistency of legal acts regulating public relations in the field of local self-government» states: «Normative legal acts regulating public relations in the field of local self-government are adopted on the basis of the Constitution of Ukraine and in pursuance of the provisions of this Code and may not contradict its provisions» [3].

It is also worth noting that the lack of national experience in the field of adoption of the Municipal Code draws attention to the need to search for relevant foreign experience. Turning to the foreign experience of codification of municipal legislation at the national level, it should be noted that documents with the title «Municipal Code» are almost absent in the world practice. None of the democratic countries with «experience» has such legal acts. For example, in the United Kingdom of Great Britain and Northern Ireland, almost as in Ukraine, the main Act of Parliament, on the basis of which the most extensive municipal reform took place in the 1970s, is codified. Although there are other Acts of the Westminster Parliament on municipal government, even with similar titles, they are not considered to be codified. In France, it is mostly the acts of individual municipalities that are codified – most of them have adopted codes of ordinances. One of the countries with a codified document similar in name to the Code of Laws on Local Self-Government (Municipal

Code) is Georgia. However, in 2017. The Code was revised in 2017 (the text was completely updated). The main reason for this was the inconsistency of the text of the 2014 Code with the letter and spirit of the European Charter of Local Self-Government. At the present stage, the 2017 Code receives mostly negative feedback when it comes to its content.

Therefore, it is unlikely that the Georgian experience in codifying municipal legislation at the national level should be adopted by developing and adopting the Code of Laws on Local Self-Government (Municipal Code of Ukraine).

It should be noted that the Draft was never considered by the Parliament, remaining in the bowels of the specialised committee, and the phrase «Municipal Code» has disappeared from the current agenda for many years.

Two decades have seen tremendous changes. For all the shortcomings of the decentralisation reform implemented in Ukraine, the profound structural shifts it has caused have led to the return of the idea of a municipal code to political discourse, at the highest level.

The idea of creating a Municipal Code was actively discussed in January 2019, when mayors of some Ukrainian cities spoke about the need to adopt a Code of Local Self-Government, listing the main ideas: – to give cities the right to delegate powers to communities in their districts, which are comparable in population to territorial communities, so that funds go down to the lowest possible level of self-government; – to introduce the institution of elected judges to resolve minor disputes; – to give large cities the opportunity to borrow on foreign markets without approval and issue municipal bonds (securities issued by state organisations); – to administer the land cadastre at the local level; – to transfer the administration of the state budget to the local level; – to transfer the administration of the state budget to the local level.

In 2020, these ideas were added to: – «direct democracy in the community», which should be expressed in local referendums at the initiative of residents and the municipality, the right to introduce selective taxes at the local level, and citizen control over local authorities through open registers of communal property and a system of public audit; – transfer of governance to the level of communities,

liquidation of district state administrations, replacement of regional state administrations with offices of prefects performing only supervisory functions; – direct budgetary relations between the community and the state; – full coverage of social security, pre-school and general secondary education, primary health care, including maintenance of educational and medical institutions by subventions.

Active progress on the adoption of the Municipal Code took place on 25 February 2021, when the President of Ukraine signed the Decree «On the Congress of Local and Regional Authorities under the President of Ukraine», which will help establish qualitatively new relations between central and local authorities. It was noted that the first global issue that the new body should focus on should be the preparation of the Municipal Code of Ukraine [2].

The Congress will follow the example of the Congress of the Council of Europe. It aims to change approaches to working with the regions and work more effectively for each region and each citizen of Ukraine. In accordance with the Regulations on the Congress of Local and Regional Authorities under the President of Ukraine, approved by the Decree of the President of Ukraine No. 89/2021 of 4 March 2021, the structure of this body consists of The Presidium, chaired by the President and consisting of the highest state officials; the Chamber of Local Authorities; and the Chamber of Regions. Each of these Chambers independently elects its leadership and delegates three representatives to the Presidium of the Congress. The Presidium of the Congress is to meet monthly to discuss solutions to local and regional problems. The Chamber of Local Authorities and the Chamber of Regions meet once a quarter (3 months) and submit proposals to the Presidium's agenda. The general meeting of the Congress should be held twice a year [1].

It is worth noting that the day after the Congress of Local and Regional Authorities (CLRA) was established, the working group presented the final version of the new version of the Law on Local Self-Government to the Subcommittee on Local Self-Government and Self-Organisation Bodies of the Verkhovna Rada of Ukraine. The draft was developed by a team of authors under the leadership of the head of the Centre of Policy and Legal Reform. At a roundtable on 1 March 2021, the head of the relevant subcommittee of the Verkhovna

Rada positioned the draft law as a possible Municipal Code. As of February 2022, the subcommittee on administrative-territorial structure and local self-government is still working on the document, but only the February text is publicly available.

The draft law is almost entirely devoted to the detailed regulation of local self-government. The chapters relating to the division of powers between local self-government and central government take up less than 20% of the document. The list of powers of the state authorities that cannot be delegated to communities, while vague, contains many different types of control, including state taxes and fees assigned to local budgets (Article 81, paragraph 8).

In fact, the text does not differentiate between the powers of the state authorities and municipalities, which are obliged to «develop», «support», «promote» an extensive list of tasks within the areas of social security, education, and healthcare within their competence. At the same time, the draft law does not solve the problem of financing the exercise of delegated powers, does not bring the expenditure part of the Budget Code in line with the powers of local self-government, and does not clearly define the powers of the new district councils. Instead, communities have new powers of their own without guarantees of funding for their implementation.

This concept is fundamentally different from the one initially stated and promoted by the leaders of local self-government – the initiators of the current implementation of the Municipal Code in the political space of Ukraine. The authorities are not proposing a «bottom-up state», but rather the construction of a single vertical with the improvement of existing control mechanisms from above. But the movement towards this has already begun, and the parties will have to reach some kind of compromise. It is unlikely that the idea of the Municipal Code will be postponed for many years – communities are gaining subjectivity and effective horizontal coordination. However, it is impossible to predict whether a compromise will be reached during the current government's term or under the new government. To a certain extent, this is a matter of political will, but currently there is neither a concept nor any changes.

Conclusions. Thus, the issue of the adoption of the Municipal Code of Ukraine remains very relevant today. Despite the fact that

many scholars have divided opinions on the expediency of introducing this document, it is still worth noting that the Municipal Code of Ukraine is an important document that should become a single set of rules that will allow for the completion of decentralisation, and the creation of transparent and effective partnerships between central government and local communities. Therefore, today there is an important task to develop and adopt a high-quality document that will meet the needs of the present.

References:

1. «On Approval of the Regulation on the Congress of Local and Regional Authorities under the President of Ukraine»: Decree of the President of Ukraine. Regulation of 04.03.2021 r. № 89/2021. URL: <https://zakon.rada.gov.ua/laws/show/89/2021#Text>
2. «On the Congress of Local and Regional Authorities under the President of Ukraine»: Decree of the President of Ukraine of 25.02.2021 r. № 73/2021 of the President of Ukraine. URL: <https://www.president.gov.ua/documents/732021-36833>
3. Draft Code of Laws on Local Self-Government in Ukraine (Municipal Code of Ukraine) 13.12.2000 r. № 6287. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=9491
4. Mishina N. V, Holovko K. V. (2020). Tendencies of systematisation of municipal law of Ukraine. *Law of Ukraine*, № 10. pp. 97–109. URL: https://pravoua.com.ua/ua/store/pravoukr/pravo_2020_10/pravo_2020_10-s6/
5. Trachuk, P. A. (2014). Codification and reforming of municipal law of Ukraine: some problems of theory and practice. P. A. Trachuk, O. B. Kachmar. (Eds.). *Scientific Bulletin of Uzhhorod National University: series: Law*. Uzhhorod: Helvetica. Voll. 1, Issue 27. pp. 115–117.
6. Trachuk P. A. (2011). Administrative and legal principles of reforming local public authorities in Ukraine. Uzhhorod. Polygraph Centre «Lyra».

Список використаних джерел :

1. Про затвердження Положення про Конгрес місцевих та регіональних влад при Президентіві України»: Указ Президента України від 04.03.2021 р. № 89/2021. URL: <https://zakon.rada.gov.ua/laws/show/89/2021#Text>
2. Про Конгрес місцевих та регіональних влад при Президентіві України»: Указ Президента України від 25.02.2021 р. № 73/2021. URL: <https://www.president.gov.ua/documents/732021-36833>

3. Проект Кодексу законів про місцеве самоврядування в Україні від 13.12.2000 р. № 6287. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=9491
4. Мішина Н. В., Головка К. В. (2020). Тенденції систематизації муніципального права України. *Право України*, № 10. с. 97–109. URL : https://pravoua.com.ua/ua/store/pravoukr/pravo_2020_10/pravo_2020_10-s6/
5. Трачук П. А. Кодифікація і реформування муніципального права України: деякі проблеми теорії та практики. П. А. Трачук, О. Б. Качмар. *Науковий вісник Ужгородського національного університету : серія: Право*. Ужгород: Гельветика, 2014. Т. 1, вип. 27. С. 115–117.
6. Трачук П. А. Адміністративно-правові засади реформування місцевої публічної влади в Україні : монографія. Ужгород: Поліграф-центр «Ліра», 2011. 335 с.

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Сучасний стан та перспективи прийняття муніципального кодексу України

Анотація. На сучасному етапі державного розвитку України вагомим чинником подальшої демократизації суспільного життя вважається вдосконалення місцевого самоврядування. Важливе значення для ефективного функціонування системи місцевого самоврядування є його нормативно-правова регламентація. Варто зауважити, що доцільність прийняття Кодексу законів про місцеве самоврядування в Україні (інакше кажучи, Муніципального кодексу України) є предметом наукового та практичного дискурсу з 2000-х рр. За два десятиліття відбулися колосальні зміни. За всіх недоліків реалізованої в Україні реформи децентралізації глибинні структурні зрушення, які вона викликала, призвели до повернення ідеї муніципального кодексу до політичного дискурсу, причому на найвищому рівні.

У 2021 році Президент України замість Ради розвитку громад та територій утворив Конгрес місцевих та регіональних влад та доручив його членам розробити Муніципальний кодекс України. Президент зазначив, що Конгрес місцевих та регіональних влад матиме свій постійно діючий офіс, і його робота має бути максимально ефективною, а не лише «на папері». За словами Президента, першим глобальним питанням, на якому слід зосередитись новому органу, має стати підготовка Муніципального кодексу України. Було зазначено, що є різні бачення, різні моделі цього до-

кумента, але треба розробити кодекс, який сприятиме не лише розвитку окремих регіонів, але й зміцненню унітарної, неподільної України. Глава держави наголосив, що центральна та місцева влада – не конкуренти й не суперники, а партнери та одна команда, і це потрібно усвідомити.

Стаття присвячена дослідженню сучасного стану та перспективам прийняття Муніципального Кодексу України. Висвітлено різноманітні погляди науковців стосовно ідеї кодифікації муніципального законодавства на загальнодержавному рівні в Україні. Розкрито сучасний стан та проблемні питання прийняття Муніципального кодексу України з урахуванням реформаційних процесів місцевого самоврядування. Проблема питання прийняття Муніципального кодексу України на сьогодні залишається дуже актуальною. Не зважаючи на те, що думки багатьох вчених із питань доцільності запровадження даного документа розділилися, все ж таки варто зауважити, що Муніципальний кодекс України – це важливий документ, який має стати єдиним набором правил, які дозволять завершити децентралізацію, створити прозорі та ефективні партнерські відносини між центральною владою та місцевими громадами. Тому на сьогодні стоїть важливе завдання щодо розробки і прийняття якісного документа, який буде відповідати потребам сучасності.

На сьогодні в Україні існує великий масив законодавства, що регулює діяльність місцевого самоврядування. Але прогалини, дублювання норм законодавства, термінологічна плутанина є вагомими перешкодами на шляху подальшої демократизації місцевого самоврядування. Тому одним із шляхів вирішення зазначених проблем є прийняття Муніципального кодексу.

Варто наголосити на тому, що наступного дня після створення Конгресу місцевих та регіональних влад у підкомітеті з питань місцевого самоврядування та органів самоорганізації Верховної Ради України робоча група презентувала фінальну версію нової редакції Закону про місцеве самоврядування.

Ключові слова: місцеве самоврядування, Муніципальний Кодекс України, реформування місцевого самоврядування.