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Constitutional and Legal Regulation of the Organisation and Activities of Public Authorities of Cities in Ukraine

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■ **Abstract.** The purpose of the study is to analyse the constitutional and legal regulation of the organisation and activities of public authorities of cities in Ukraine. The following tasks were outlined to achieve this goal: identify the constitutional foundations of the establishment of public authorities of cities; determine the circle of relevant bodies; specify the constitutional and legal status of public administration bodies of cities in Ukraine. The methodological basis of the paper was a set of general scientific and special methods, techniques, and means of scientific knowledge, and their complex application, aimed at achieving the goal and fulfilling the tasks of the study. Constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine is the object of a long-term investigation, which as a result, has various proposals for reforming this management system. The choice of methodological tools should ensure a systematic investigation of current trends in improving the constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine. The application of the principle of consistency contributes to the examination of the institutional mechanism for the implementation of local public power in cities. The method of constitutional modelling enabled the development of proposals and recommendations for improving the constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine. The scientific originality consists in the establishment of theoretical and methodological foundations for improving the constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine and substantiating practical proposals for optimising the system of local public authorities of cities in Ukraine. In general, the constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine creates a dualistic system that covers local state executive authorities, which, on the one hand, include local state administrations and territorial bodies of central executive authorities, on the other – city heads, the city council and its executive body, which are local self-government bodies. Notably, local state administrations at the urban level operate only in the cities of Kyiv and Sevastopol, and they are also created in the districts of the respective cities. The head of state has the main influence on the establishment of local state administrations since it is they who appoint the relevant heads, who form their composition. Territorial bodies of central executive authorities at the city level perform not citywide managerial functions, but specific functions of the state assigned to the relevant central body. In turn, local self-government bodies – the city council and its executive body, the mayor, who is the main official of the territorial community of the city, in accordance with Art. 140 of the Constitution of Ukraine and the Law of Ukraine “On local self-government in Ukraine”, – are responsible for solving issues of local significance. Therewith, Ukraine, according to researchers, needs a decentralisation reform, which consists in reforming the city administration system, considering the successful experience of the EU countries

■ **Keywords:** polygraph; polygraphology; polygraph specialist; expert; special knowledge; forensic psychophysiological examination

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■ Introduction

In the current conditions in Ukraine, the trend towards increasing the urban population continues, and the main resources are concentrated in cities. It is clear that the issue of implementing local self-government by territorial communities of cities is quite relevant. In addition, Ukraine has applied a mixed concept of local self-government, or the so-called concept of

municipal dualism, which provides for the implementation of management at the local level both through the implementation of local self-government and through the implementation of local state power.

The Constitution of Ukraine does not contain any specific provisions on city management. The norms defining the procedure for implementing appropriate management are contained in various sections of the Basic Law concerning the construction of the state apparatus in general and the principles of local self-government in Ukraine, in particular.

Constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine creates a dualistic system that includes local state executive authorities and local self-government bodies. Separately, the Constitution of Ukraine defines the special status of two cities, the organisation of Management of which is outlined in special laws.

The issues of organising the exercise of local public power in Ukraine in general and some of its aspects, in particular, have been investigated by such researchers as: O. Batanov, Ya. Ben, V. Bordeniuk, N. Voitenko, S. Haiduchenko, B. Kalynovskyi, T. Kulyk, A. Shynkovych. Therewith, a comprehensive analysis of the constitutional and legal regulation of urban management issues in Ukraine was not conducted.

As of today, the constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine requires revision, considering the problems of implementing local public authorities in Ukraine, and approaches to relevant reform should consider the successful experience of EU countries.

The purpose of the study is to analyse the constitutional and legal regulation of the organisation and activities of public authorities of cities in Ukraine. The following tasks must be completed to achieve this goal:

- identify the constitutional basis for the establishment of public authorities in cities;
- determine the circle of relevant bodies;
- establish the constitutional and legal status of public administration bodies of cities in Ukraine.

The scientific originality consists in the establishment of theoretical and methodological foundations for improving the constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine and substantiating practical proposals for optimising the system of local public authorities of cities in Ukraine.

■ Results and Discussion

According to Art. 140 of the Constitution of Ukraine, in the cities of Ukraine, territorial communities, realising local self-government as the right to resolve issues

of local significance, form city councils, which also form their own executive bodies and elect the mayor.

Local state administrations as state executive authorities function only in cities with special status – Kyiv and Sevastopol (Art. 118 of the Constitution of Ukraine) [1].

According to part 3 of Art. 197 of the Electoral Code of Ukraine, the total composition of the council depends on the number of voters – members of the territorial community. Thus, the number of deputies of the local council is less than 10 thousand voters – 22 deputies; from 10 thousand to 30 thousand voters – 26 deputies; from 30 thousand to 50 thousand voters – 34 deputies; from 50 thousand to 100 thousand voters – 38 deputies; from 100 thousand to 250 thousand voters – 42 deputies; from 250 thousand to 500 thousand voters – 54 deputies; from 500 thousand to 1 million voters – 64 deputies; from 1 million to 2 million voters – 84 deputies; over 2 million voters – 120 deputies.

According to the population data of the Ministry of Finance for major cities of Ukraine, as of January 1, 2021, the population of Kyiv is 2962180, the next largest population is in the city of Dnipro – 980948, and the smallest – 50414 in Gorishni Plavni [2].

That is, the largest city council in terms of the number of deputies is formed in the capital of Ukraine, and the smallest is Gorishni Plavni. By the number of deputies, this is the range from 38 to 120. considering the statistical data of the population of Ukrainian cities, it can be concluded that city councils function in Ukraine in the following quantitative composition: 38, 42, 54, 64, 84, 120 deputies of the local council.

In the cities of Ukraine, except for Kyiv and Sevastopol, which, according to the Constitution of Ukraine, are cities with special status, city councils form their own executive bodies.

According to Art. 1 of the Law of Ukraine “On local self-government in Ukraine”, executive bodies of councils are bodies that, in accordance with the Constitution of Ukraine and this Law, are created by village, town, city, district councils in cities (if they are created) to exercise executive functions and powers of local self-government within the limits defined by this and other laws [3].

Art. 11 of the Law of Ukraine “On local self-government in Ukraine” states that the executive bodies of the city, district councils in cities (in the case of their creation) are their executive committees, departments, and other executive bodies created by councils, which are controlled and accountable to the relevant councils, and on the implementation of delegated powers of executive authorities – also controlled by the relevant executive authorities.

According to Art. 5 of the Law of Ukraine “On local self-government in Ukraine”, district councils in the city create their own executive bodies. The deputies of the district council in the city elect the head of this council from among their members, governing both the relevant council and its executive committee.

The position of the Constitutional Court of Ukraine regarding the status of the mayor is set out in a number of decisions. Generally, it consists in the fact that the mayor is the main official of the territorial community of the city (part 1 of Art. 12 of the Law of Ukraine “On local self-government in Ukraine”) with a representative mandate. The presence of a representative mandate of the mayor is primarily due to their direct election by the territorial community of the city. The mayor, as a person who has a representative mandate, acts on behalf of voters, in particular, represents the territorial community, the city council, and its executive committee in relations with state bodies, other local self-government bodies, associations of citizens, etc.; applies to the court on the recognition of illegal acts of the relevant local self-government bodies, local executive authorities, enterprises, institutions, and organisations that restrict the rights and interests of the territorial community, and the powers of the council and its bodies; concludes contracts on behalf of the territorial community, the city council and its executive committee in accordance with the legislation (part 3 of Art. 42 of the Law of Ukraine “On local self-government in Ukraine”). These functions and powers are fulfilled because the voters have chosen them and given them a mandate (i.e., an assignment). The mayor is the main official of the relevant territorial community of the city (Art. 12, parts 3, 4, 5, 6 of Art. 42 of the Law of Ukraine “On local self-government in Ukraine” in the context of Art. 141 of the Constitution of Ukraine) [4].

According to Art. 192 of the Electoral Code of Ukraine, elections of the village, town, city (a city with a number of voters less than 75 thousand people) heads are held according to the majority electoral system of relative majority in a single-mandate village, town, city electoral district, which, accordingly, coincides with the territory of a village, town, city according to the administrative-territorial structure or the territory of a village, town, city territorial community. Elections of the city (a city with a number of voters of 75 thousand or more people) of the head are held according to the majority electoral system of an absolute majority in a single-mandate city electoral district, which coincides with the territory of the city according to the administrative-territorial structure or the territory of the city territorial community. The electoral system under which elections of deputies of the

city, village, settlement council and mayor are held is determined considering the number of voters who have the right to vote in the relevant local elections, as of the first day of the month preceding the month in which the electoral process begins with the corresponding local elections [5].

In the paper, N. Voitenko notes that the adopted electoral code of Ukraine has both positive aspects and certain shortcomings. Thus, it is positive that its provisions establish the right to vote in local elections for internally displaced persons, as opposed to previous laws on local elections, and the right to take part in elections of migrant workers due to a simplified procedure, which provides for the right to change the electoral address, which in turn corresponds to the general electoral right of Ukrainian citizens, which is enshrined in the Constitution of Ukraine and international treaties. Negative, according to the author, is that the provisions of the Electoral Code do not contain norms on the protection of the electoral right of people with disabilities, which contradicts the principle of equal conditions in the exercise of the electoral right by citizens of Ukraine. As the author notes, it is also important that there are certain conflicts in the provisions of the Electoral Code, which is the embodiment of the branching norms of electoral legislation that existed before the adoption of this code. Thus, in accordance with paragraph 5 of Art. 14, conscripts are granted leave to exercise their right to vote. Instead, paragraph 7 of Art. 7 of the Code deprives conscripts of the right to vote in local elections, describing such persons as those who do not belong to any territorial community, thus the legislator grants citizens of Ukraine, namely conscripts, limited voting rights [6].

The city of Kyiv, which has a special status, also has its own system of local government bodies. In the study, T. Kulyk defines a local state authority as an integral part of the unified state apparatus of Ukraine, which is a collective of citizens of Ukraine or one citizen of Ukraine who has a special status based on the procedure established by law to perform the tasks and functions of the state at the local level and is endowed for this purpose with appropriate state powers, which are implemented in legal and organisational forms defined by law. According to the current legislation, such bodies include: local state administrations, territorial bodies of ministries, and other central executive authorities [7].

Thus, in general, the regulatory and legal regulation of the organisation and activities of local public authorities of cities in Ukraine creates a dualistic system that includes local state executive authorities, which on the one hand include local state administrations and territorial bodies of

central executive authorities, on the other – city heads, the city council and its executive body, which are local self-government bodies.

The most important aspect of the organisation and activity of local public authorities of cities in Ukraine is the result of such activities, the quality and effectiveness of their management decisions.

In particular, S. Haiduchenko states in the context of ensuring the necessary level of public management decisions in Ukraine, the aggravation of the problem of developing the corporate culture of public authorities in the following areas: internal corporate – formation of the necessary level of competence of employees and a positive microclimate in the public authority, the satisfaction of employees with material and technical support and the level of interaction with the management; external corporate – establishing a dialogue between the authority and society; harmonisation of corporate interests of public administration in society; adaptation to the Ukrainian realities of the foreign practice of corporatism; development of a general code (standard) of the corporate culture of public administration, in particular, in the information and communication field, etc. [8]. In addition, according to the author, at the current stage of decentralisation of power in Ukraine, the level of management decisions does not meet the challenges of the time regarding communication and coordination of actions of all participants in this process. The problem of forming regional development priorities is particularly critical [8].

Researcher A. Shynkovych, on the European practice of reorganising local self-government, notes that it is interesting, multidimensional, and instructive, including for modern Ukraine, which, while developing its model (system) of such governance, on the one hand, uses its own history and traditions of people's self-government, and, on the other hand, considers the best achievements of reorganising such self-government obtained by other, mainly European countries. Potentially, in addition to examples of decentralisation of power, implementation of administrative-territorial reforms, training systems for civil servants, etc., Ukraine actively takes part in the functioning of such Euroregions as the Association "Carpathian Euroregion", "Bug", "Lower Danube", "Upper Prut", "Dnipro", "Slobozhanshchyna". Thus, the implementation of the modernisation of local self-government in Ukraine takes place in the context of both national and international practices of such reform [9].

According to Ya. Ben, the application of the CLEAR methodology, which reflects the feedback between local self-government bodies and the territorial community, can be an effective management

mechanism for using the potential of participatory democracy during the implementation of local self-government reform in Ukraine, it is also noted that participatory democracy at the local level requires perfect mechanisms for its implementation for further reform of local self-government in Ukraine. Therewith, participatory democracy is not an alternative to constitutional forms of local democracy and cannot replace direct democracy (local elections and referendums) and the activities of representative local self-government bodies (local councils, village, town, city heads, prefects, etc.) in Ukraine. Participatory democracy completes the triad "direct democracy – representative democracy – participatory democracy" and strengthens the power of territorial communities, ensures the establishment and functioning of civil society institutions at the local level and interaction between residents and local self-government bodies in resolving issues of local significance, which is extremely important in the inter-electoral period [10].

■ Conclusions

Based on the conducted study, it can be concluded that:

1. In general, the constitutional and legal regulation of the organisation and activities of local public authorities of cities in Ukraine creates a dualistic system that includes local state executive authorities, which on the one hand include local state administrations and territorial bodies of central executive bodies, on the other – city heads, the city council and its executive body, which are local self-government bodies. Notably, local state administrations at the city level operate only in the cities of Kyiv and Sevastopol, and are also created in the districts of the corresponding cities.

2. The head of state has the main influence on the establishment of local state administrations since they appoint the relevant heads, who form their composition.

3. Territorial bodies of central executive authorities at the city level perform not citywide managerial functions, but specific functions of the state assigned to the relevant central body. In turn, local self-government bodies – the city council and its executive body, the mayor, who is the main official of the territorial community of the city, in accordance with Art. 140 of the Constitution of Ukraine and the Law of Ukraine "On local self-government in Ukraine" – are responsible for solving issues of local significance.

4. Ukraine, according to researchers, needs a decentralisation reform, which consists in reforming the city administration system, considering the successful experience of the EU countries.

■ References

- [1] Ben, Ya. (2019). Modernization of the mechanism of realization of democracy of participation in the conditions of reform of local self-government in Ukraine. *Expert: Paradigms of Legal Sciences and Public Administration: Electronic Scientific Publication*, 2(4), 146-158. doi: 10.32689/2617-9660-2019-4-2-146-158.
- [2] Population in large cities of Ukraine on January 1, 2021. (n.d.). Retrieved from <https://index.minfin.com.ua/ua/reference/people/town/>.
- [3] Haiduchenko, S. (2021). Making responsible and timely management decisions by public authorities as a challenge of today. *Expert: Paradigms of Legal Sciences and Public Administration: Electronic Scientific Publication*, 1(13), 202-213. doi: 10.32689/2617-9660-2021-1(13)-202-213.
- [4] Constitution of Ukraine. No 254k/96-VR. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?find=1&text=%D0%B2%D0%B8%D0%BA%D0%BE%D0%BD#w1_67.
- [5] Kulyk, T.O. (2016). *Constitutional principles of interaction between local state authorities and local self-government bodies in the city of Kyiv*. Kyiv: Alerta.
- [6] Decision of the Constitutional Court of Ukraine in the case on constitutional petitions of 49 people's deputies of Ukraine and the executive committee of Vinnytsia City Council on official interpretation of provisions of Articles 38, 78 of the Constitution of Ukraine, Articles 1, 10, 12, part two of Article 49 of the Law of Ukraine "On Local Self-Government in Ukraine" (case on combination of positions of the People's Deputy of Ukraine and the mayor). No. 7-rp/1999. Case No. 1-25/99. (1999, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/v007p710-99#Text>.
- [7] Shynkovych, A. (2020). European integration vector of formation of modern systems of local self-government. *Expert: Paradigms of Legal Sciences and Public Administration: Electronic Scientific Publication*, 1(7), 266-273. doi: 10.32689/2617-9660-2020-1(7)-268-273.
- [8] Voitenko, N. (2019). Regulatory and legal consolidation and implementation of citizens' voting rights in local elections. *Expert: Paradigms of Legal Sciences and Public Administration: Electronic Scientific Publication*, 4(6), 139-149. doi: 10.32689/2617-9660-2019-4(6)-139-149.
- [9] Electoral Code of Ukraine. No. 396-IX. (2019, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/396-20#Text>.
- [10] Law of Ukraine "On local self-government in Ukraine". No. 280/97-VR. (1997, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>.

■ Список використаних джерел

- [1] Бень Я. Модернізація механізму реалізації демократії участі в умовах реформи місцевого самоврядування в Україні. *Експерт: парадигми юридичних наук і державного управління*. 2019. Вип. 2. № 4. С. 146–158. doi: 10.32689/2617-9660-2019-4-2-146-158.
- [2] Чисельність населення по великих містах України на 1 січ. 2021 р. URL: <https://index.minfin.com.ua/ua/reference/people/town/>.
- [3] Гайдученко С. Прийняття відповідальних і своєчасних управлінських рішень органами публічної влади як виклик сучасності. *Експерт: парадигми юридичних наук і державного управління*. 2021. Вип. 1. № 13. С. 202–213. doi: 10.32689/2617-9660-2021-1(13)-202-213.
- [4] Конституція України: Закон України від 28 черв. 1996 р. № 254к/96-ВР. URL: https://zakon.rada.gov.ua/laws/show/254%D0%BA/96%D0%B2%D1%80?find=1&text=%D0%B2%D0%B8%D0%BA%D0%BE%D0%BD#w1_67.
- [5] Кулик Т. О. Конституційні засади взаємодії місцевих органів державної влади та органів місцевого самоврядування в місті Києві: монографія. Київ: Алерта, 2016. 198 с.
- [6] Рішення Конституційного Суду України у справі за конституційними поданнями 49 народних депутатів України і виконавчого комітету Вінницької міської ради щодо офіційного тлумачення положень статей 38, 78 Конституції України, статей 1, 10, 12, частини другої статті 49 Закону України «Про місцеве самоврядування в Україні» (справа про сумісництво посад народного депутата України і міського голови) від 6 липня 1999 року № 7-рп/1999. Справа № 1-25/99. URL: <https://zakon.rada.gov.ua/laws/show/v007p710-99#Text>.
- [7] Шинькович А. Євроінтеграційний вектор формування сучасних систем місцевого самоврядування. *Експерт: парадигми юридичних наук і державного управління*. 2020. Вип. 1. № 7. С. 266–273. doi: 10.32689/2617-9660-2020-1(7)-268-273.

- [8] Войтенко Н. Нормативно-правове закріплення та реалізація виборчих прав громадян на місцевих виборах. *Експерт: парадигми юридичних наук і державного управління*. 2019. Вип. 4. № 6. С. 139–149. doi: 10.32689/2617-9660-2019-4(6)-139-149.
- [9] Виборчий кодекс України: Закон України від 19 груд. 2019 р. № 396-IX. URL: <https://zakon.rada.gov.ua/laws/show/396-20#Text>.
- [10] Про місцеве самоврядування в Україні: Закону України від 21 трав. 1997 р. № 280/97-ВР. URL: <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text>.

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■ **Анотація.** Метою статті є здійснення аналізу конституційно-правової регламентації організації та діяльності органів публічної влади міст в Україні. Для її досягнення було окреслено такі завдання: з'ясувати конституційні засади формування органів публічної влади міст; виокремити коло відповідних органів; з'ясувати конституційно-правовий статус органів публічного управління міст в Україні. Методологічною основою дослідження стала сукупність загальнонаукових і спеціальних методів, прийомів і засобів наукового пізнання, їх комплексне застосування, спрямоване на досягнення мети та виконання завдань дослідження. Конституційно-правова регламентація організації та діяльності органів місцевої публічної влади міст в Україні є об'єктом тривалих наукових пошуків, які як результат мають різноманітні пропозиції щодо реформування зазначеної системи управління. Вибір методологічного інструментарію має забезпечити системне вивчення сучасних тенденцій удосконалення конституційно-правової регламентації організації та діяльності органів місцевої публічної влади міст в Україні. Застосування принципу системності сприяє здійсненню дослідження інституційного механізму реалізації місцевої публічної влади в містах. Метод конституційного моделювання дав змогу напрацювати пропозиції та рекомендації з удосконалення конституційно-правового регулювання організації та діяльності органів місцевої публічної влади міст в Україні. Наукова новизна полягає у формуванні теоретико-методологічних засад удосконалення конституційно-правової регламентації організації та діяльності органів місцевої публічної влади міст в Україні та обґрунтуванні пропозицій практичного спрямування щодо оптимізації системи органів місцевої публічної влади міст в Україні. Загалом конституційно-правова регламентація організації та діяльності органів місцевої публічної влади міст в Україні створює дуалістичну систему, що охоплює місцеві органи державної виконавчої влади, які, з одного боку, включають місцеві державні адміністрації та територіальні органи центральних органів виконавчої влади, з іншого – міських голів, міську раду та її виконавчий орган, що є органами місцевого самоврядування. Слід зазначити, що місцеві державні адміністрації на міському рівні функціонують лише в містах Києві та Севастополі, а також їх створюють у районах відповідних міст. Основний вплив на формування місцевих державних адміністрацій має голова держави, оскільки саме він призначає відповідних голів, які й формують їх склад. Територіальні органи центральних органів виконавчої влади на рівні міст виконують не загальноміські управлінські функції, а конкретні функції держави, що покладені на відповідний центральний орган. А ось органи місцевого самоврядування – міська рада та її виконавчий орган, міський голова, що є головною посадовою особою територіальної громади міста, відповідно до ст. 140 Конституції України та Закону України «Про місцеве самоврядування в Україні», – відповідають за вирішення питань місцевого значення. Водночас Україна, на думку вчених, потребує реформи щодо децентралізації, що полягає в реформуванні системи міського управління, з огляду на вдалий досвід країн ЄСв

■ **Ключові слова:** місцева публічна влада в Україні; місцеве самоврядування; органи місцевої публічної влади міст в Україні; місцеві державні адміністрації; органи місцевого самоврядування