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THE COMPETENCE OF LOCAL PUBLIC AUTHORITY IN UKRAINE

The article is devoted to clarifying the concept of the competence of local public authorities and its characteristics. The author identifies the problem regulatory support implementation of the competence of local public authorities. He notes that to date, both local state administration and local governments that implement local public authority, make it standardized and defined by the order of the state and there is no real autonomy to decide the affairs of local importance in regional communities by them and their local governments. The author suggests ways to overcome the problems.

Keywords: competence of local public authorities; local executive authorities; local government; powers of local public authorities.

The institute of local public authority in the constitutional and legal science was not searched enough, some research papers was dedicated to municipal and state components of the institution, some authors consider the relationship between the state and local government authorities, cooperation of relevant bodies, among them A. Batanov, Y. Bysyaha, I. Bondarenko, V. Bordenyuk, O. Boryslavska, J. Delia, T. Carbine, T. Kulik, A. Prodayevych, I. Storozhuk, M. Teplyuk, L. Udovik, M. Honda, G. Chapala, etc.

The aim of our study is to elucidate the concept of the competence of local public authority. The tasks are the characteristics of the concept of competence of local public

authority, identify problems of normative support of its implementation, finding ways to improve it.

In the classical theory of global constitutionalism, formulated in the seventeenth and eighteenth centuries was established postulate that the management of public affairs must be legitimate, effective and democratic. So this should be organized legal order, which clearly defines a «range of cases» of each of the public authorities, avoiding competition while ensuring the stability and predictability of public administration of society. Since the nineteenth century the list of mandatory specifications optimal control is complemented by the requirement of decentralization, which Dzh. Mill formulated as follows: «Efficiency achieve the greatest possible dispersal of power at concentrations as much information for the active spread from the center» [1, p. 126–127].

The concept of «competence» scientists are considering different ways, often in literature the definition of competence as an organic combination of authority and jurisdiction by which defined «legal field of activities» of a particular public authority and its officers and employees [2, p. 92–94; 3, p. 42–44; 4, p. 198].

Regarding the competence of local public authorities, there is a reasonable opinion that the method of determining their competence depends primarily on the specific of the legal system [5, p. 24]. In Anglo-Saxon countries has a positive adjustment jurisdiction of local governments: their actions are legitimate only when they are directly specified in the law – if local authorities are *intra vires*, within the authority. In continental Europe and the states that have borrowed the continental legal system, local competence defined through negative regulation, local authorities can perform any action not prohibited by law and not within the competence of other authorities. For Ukraine, as the vast majority of other CIS countries, characterized by the 'attraction' to a positive way of determining the competence of local public authorities, at the constitutional level (Part 2 of Article 19) stipulates the obligation of all public authorities and their officials act exclusively within the powers defined by law [6].

We substantiate the view that the competence of local public authority includes areas of public life, functional component of local

public power status directed to, the scope of authority of these bodies and the territory to which they apply.

The territorial basis for the organization and functioning of local public authorities are elements of administrative-territorial structure of the state, according to which the system of local public authorities is built, their legal status, demographic, geographic, social and economic characteristics. Subjects which are directed by overbearing influence of the local public authorities, is the population of the administrative unit. They consists of citizens, foreigners, stateless persons, persons in need of additional or temporary protection and currently living or staying in this territory; and legal entities, enterprises, institutions and organizations of different ownership, located and operating in the area.

More attention should be areas of social life covered by the local public authority and scope of the powers vested in the local public authorities.

Thus, the State Basic Law contains a provision of direct action that the local administrations exercise executive, outlining the territory of its implementation – namely, regions, districts, cities of Kyiv and Sevastopol. In Art. 119 of the Constitution established that local administrations on their respective territory ensure: the Constitution and laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine and other executive authorities; law and order; observance of human rights and freedoms; implementation of national and regional socio-economic and cultural development, environmental protection programs, and in areas where indigenous peoples and national minorities – programs for their national and cultural development; preparation and implementation of respective oblast and district budgets; a report on the implementation of respective budgets and programs; interaction with local government; realization of other powers vested by the state and also delegated by the respective councils [7].

The last part of this article indicates that the legislature determines the above listed positions as the powers of local administrations. Rather the design standards of terminological clarity was not a priority to us in turn to determine the competence of local public authorities, one component of which is the executive power,

which is exercised by local state administrations, requires a separation of concepts such as functions, tasks and powers.

The functions of local public authorities are basic, legislated areas of their activity, reflecting their role in the mechanism of the state.

In the literature expressed different opinions on the correlation functions from the competence of the state authorities. This diversity of approaches to solving this problem, almost all researchers agree that that the functions and jurisdiction of any state authority are in close contact with each other. Whereas the powers substantive and territorial jurisdiction make the concept of «competence», we can conclude that the functions are areas of implementation (application) competence towards the goal set before the body [8].

In the theory of state and law issues of functions of the state body shouldn't identified with the functions of the state, as state functions are the basic directions of its activity, which is due to the work of all state apparatus and each of its individual organs.

Functions as a separate state body – a social destination of each specific organ as a special part of the mechanism of the state and find its expression and specification of the competence of state bodies assigned to each body of rights and obligations [9, p. 71]. Agree with this assertion, which in turn serves as an argument in favor of the areas defined in Art. 119 of the Constitution of Ukraine are functions of local state administrations which find their expression and specification of the rights, duties and powers established in the law.

Interesting is the fact that the planning of statistical activity authors attributed not to the functions of the state, and the types of activity of state [9, p. 72]. These types of government activities are actually ensuring concerning the functions of the state.

From the contents of the Law of Ukraine «On local state administrations» from April 9, 1999, it follows that the competence of local administrations including the main branch authority to local administrations, the powers of local government, delegated to them by the respective councils powers of the executive power of a higher level, transferred to local government administrations by Cabinet of Ministers of Ukraine.

From the content of art. 13 of the Act [10] under the general authority of local administrations legislators understand issues within and forms determined by the Constitution and laws of Ukraine, to ensure the rule of law, protection of rights, freedoms and legal interests of citizens; socio-economic development of the territories; budget, finance and accounting; property management, privatization, promotion of business development and implementation of state regulatory policy; industry, agriculture, construction, transport and communications; science, education, culture, health, physical education and sports, family, women, youth and children; land use, natural resources and environmental protection; foreign economic activity; of defense and mobilization training; social security, employment and wages.

The main branch powers assigned by the legislator for the eleven sectors, as well as social security and social protection separate from the field of employment and wages, regarding the content of powers exercised by local state administrations, are due to the fact that these bodies are called to exercise executive power in a particular area, so there are different and affect different areas.

The scope and nature of the work does not allow to list all sectoral powers of local administrations, but their analysis can come to an interesting conclusion that for realization of the state of law enforcement, legal, policy, justice, state policy in the field of civil protection of population and territories from emergency situations and prevention, emergency response, rescue, enforcement of criminal penalties established central executive government, each of which has its own territorial authorities; for organizing and holding elections and referenda in Ukraine, ensuring the implementation and protection of electoral rights of citizens of Ukraine and the rights to participate in referendums, the sovereign right of the Ukrainian people to express its will set up a permanent collective state body – the Central Election Commission. Local administrations as we see also has more or less defined powers in each of these areas, and if they are designed and operate in the territories, with special structural units for the implementation of these powers, perhaps advisable is not to create territorial bodies of central executive

bodies, expanding the powers of local administrations, or do it selectively in each industry separately.

We think rightly remarks U. Torohtiya that we must reject the general wording such as «ensure», «facilitate», «organized» [6, p. 104] for the formulation of powers of local public authorities. That are confusing the situation and do not give a clear answer to the question, what exactly do these authorities have in a given area [6], and in practice leads to failure of the relevant powers at all.

For external scientism and formal prudence general formulations that are more appropriate for determining features than powers mainly lies ignorance of the drafter with the concrete specific areas of social life, and therefore – the inability to articulate the specific extent possible and proper behavior of public authorities in these areas [6].

Regarding the second part of local public authorities – the authorities of local governments, and therefore the competence of local government, we note that there is no consensus, as it is a relatively new institution of constitutional law, which permanently since its introduction in independent Ukraine is in the process of reform.

O. Batanov in his monograph devoted to municipal authorities in Ukraine, for example, notes that disclosure by baseline characteristics competence of local government, such as ways to constitutional and legal regulations, forms and delegated their value, mandatory and optional competencies, content competence find the essence, scientific understanding of the legal nature of local issues as the main object of municipal authorities [12, p. 345].

Turning to the norms of the Constitution of Ukraine [7], we see that in art. 143 it is the competence of territorial communities of villages, towns, cities on the management of the property that is in communal ownership; approval of socio-economic and cultural development programs and monitoring their implementation; approval of the budgets of the respective administrative units and monitoring their implementation; establishment of local taxes and duties according to law; provision of local referendums and implementation of their results; establishment, reorganization and liquidation of public enterprises, organizations and institutions, as well as monitoring their activities; and resolving other issues of local

importance - which implemented the communities directly and through them formed local governments.

The above competencies include the powers (communal property management, approval of budgets, establish local taxes and fees) activities, with which is of national importance as an element of development planning throughout the country, providing local referendums is the responsibility of local governments, since local communities directly there right on the local referenda, and ensure its implementation shall be recognized by the powers of the community, as for the establishment, reorganization and liquidation of public enterprises, organizations and institutions is the right connected to the powers for the management of municipal property.

The Constitution of Ukraine defines competence also regional and district councils, which is caused by the territory to which it spreads and the fact that the representative bodies of local government created to represent common interests of territorial communities of villages, towns and cities.

Also provides the possibility of delegating local government executive powers, provided financial and material support for their implementation.

When considering the notion of competence of local government, as part of the competence of local public authorities is necessary to clarify the meaning of «local issues» and who has the right to decide their own local community directly or through local governments.

Thus objective evidence for the selection of local issues include the following: the problem is solved only in respect of the subject area of interest of municipal authorities; solution to the problem is within the functions of municipal government, which has jurisdiction of the subject and objects, that is subject of local government can address not only the issues that are directly attributed to their competence, but also those who although not directly provided by law, not beyond the law; all local issues that are not classified as specific rules for the conduct of other organs [12, p. 360].

At the local government practice is a situation where the local community directly in fact unable to manage local affairs, as

regulatory no fixed mechanism of local referenda, and such forms of citizen participation in governance in this case local affairs as holding public hearings for regulatory acts, possibility of recourse to local government with appeals is guaranteed hearing the views of community members through direct decision-making, because in fact competence of the of local public authorities are not endowed with local communities but local governments.

Certainly positive was amending the Law of Ukraine «On citizens' appeals» on October 2, 1996 Art. 23–1, according to which citizens Ukraine may apply, including local government electronic petitions via the official websites of whom it is addressed or website of the public association, which has been collecting signatures in support of e-petitions on issues are within the competence of the relevant body. Restrictions on the content of the petition is that the e-petition cannot contain incitement to overthrow the constitutional order, violation of territorial integrity of Ukraine, propaganda of war, violence, cruelty, incitement of ethnic, racial or religious hatred, incitement to commit terrorist acts, attacks on law and freedoms. [13] Since these changes were made in 2015 in implementing the rights to petition has not yet updated the optimal mechanism.

In this regard, it can be argued that the basis of the competence of local government as part of the competence of local public authorities are the powers of local government.

Yes, art. 26 of the Law of Ukraine «On local government in Ukraine» dated 21 May 1997 [14] defined the scope of authority of village, town and city councils. There are 58 issues to be resolved exclusively in the plenary meetings of village, town and city councils. Among them are state-government, ie those that determine the scope of management exactly local governments include: 1 – approval of socio-economic and cultural development of relevant administrative units, target programs on other questions of local government; 2 – approval of the local budget, amendments thereto, approval of the report on its implementation; 3 – establishment of local taxes and duties under the Tax Code of Ukraine; 4 – the creation of trust funds, and a number of issues concretized related to

budget and financial functions of local government; 5 – making decisions on exclusion under the law of communal property, adoption of local privatization programs, as well as a list of communal property that cannot be privatized, and the other related to the privatization and management of municipal property on the creation, liquidation, reorganization and conversion utilities, and so on.

Also exclusive competence of village, town and city councils are making decisions on administrative and territorial structure within and in the manner determined by these and other laws, the establishment under legislation rules for the landscaping of the town, providing it cleanliness and order, trading markets, the observance of silence in public, the violation of which provides for administrative liability.

Such powers of village, town and city councils, as: 1 – the creation under the law at the expense of local government institutions providing primary legal aid, appointment and dismissal of the heads of these institutions, involvement in a legal way individuals and legal entities of private law to provide free primary legal assistance; 2 – adoption within the limits set by law, decisions on the fight against natural disasters, epidemics, epizootics, the violation of which provides for administrative liability; 3 – determine the areas which may be carried out potentially dangerous actions in terms of the presence of civilians, with the participation of the Armed Forces of Ukraine and other military formations and law enforcement agencies with the use of weapons and military equipment; 4 – decisions to implement the provisions of Articles 7, 11, 12, 20, 24 of the Law of Ukraine «On principles of state language policy» of July 3, 2012 .; 5 – according to the legislation creating municipal rescue service – in fact there are responsibilities that a state legislator put on local authorities to ensure the implementation of legal policy, policy in the field of civil protection and security of the state language policy, etc. . Again the question arises usefulness of the relevant regional offices of central executive power, if power to regulate social relations in these areas endowed and local administrations and local authorities.

The Law of Ukraine «On local government in Ukraine» dated 21 May 1997 [14] establishes sectoral powers of village, town and city councils (Articles 27–39). These the powers are divided by area, compared discussed above main branch powers of local state administrations and executive bodies of village, town and city councils see that coincide seven areas (sectors).

Despite the fact that the scientific literature Ukraine has repeatedly stressed that the policy of regional development should be based on generally accepted European and principles, the current model of territorial organization of power in Ukraine is realized through the «political and economic dual power», valid in Ukraine model of local government prevents the implementation of many of the principles of local self-government developed the practice Western European countries (especially such as subsidiarity, autonomy in matters within the jurisdiction of local self-government, freedom of initiative within the law). This confirms the idea that the change is subject imperfect system of government.

In our view, a precondition for enforcement of the declared principles of local government and the laying of the foundation of the implementation of local public authorities in Ukraine are restructuring the system of governance and management aimed at decentralization and reform of competence bases of local public authorities in order to eliminate duplication of powers of local public administration and local government, in favor of freedom and autonomy of local authorities in its activities, a clear definition of the «local issues» and specify and curtail the powers of local state administrations.

Thus, under the competence of the of local public authority understand areas of social life, which is aimed by the functional component of status of local public authorities set the scope of authority of such bodies, legal and institutional mechanism for the adoption and implementation decisions mandatory in certain areas and for a particular range of subjects.

We believe that village, town and city councils as representative bodies of local self-government should not be limited

in the choice of forms and methods of management of municipal property, land, streamlining domestic, cultural, social and economic issues, construction and improvement of the areas, the need presence legally enforceable the powers, order, its implementation, as provided ch. 2, Art. 19 of the Constitution of Ukraine.

Because for today and local state administration and local governments that implement local public authorities, do it in determined and regulated by the state order, local communities, and bodies created by them have no real independence to decide issues of local value.

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Компетенція місцевої публічної влади в Україні

З'ясовано поняття компетенції місцевої публічної влади, його характеристику. Виявлено проблеми нормативного забезпечення реалізації компетенції місцевої публічної влади й констатовано, що на цей час і місцеві державні адміністрації, і органи місцевого самоврядування, що реалізують місцеву публічну владу, роблять це в унормованому і визначеному державою порядку. Водночас реальної самостійності у вирішенні справ місцевого значення територіальні громади та створені ними органи не мають, а отже запропоновано шляхи подолання зазначеної проблеми.

Ключові слова: компетенція місцевої публічної влади; місцевий орган виконавчої влади; орган місцевого самоврядування; повноваження місцевих органів публічної влади.

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Компетенция местной публичной власти в Украине

Определено понятие компетенции местной публичной власти, его характеристика. Виявлены проблемы нормативного обеспечения реализации компетенции местной публичной власти и констатировано тот факт, что на данный момент и местные государственные администрации, и органы местного самоуправления, реализующие местную публичную власть, делают это в нормированном и определенном государством порядке. В то же время, реальной самостоятельности в решении вопросов местного значения территориальные общины и созданные ими органы не имеют, предложены пути решения этой проблемы.

Ключевые слова: компетенция местной публичной власти; местный орган исполнительной власти; орган местного самоуправления; полномочия местных органов публичной власти.