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Maryna Petryshyna,
Candidate of Juridical Sciences, Docent,
Associate Professor at the Department of State Building
Yaroslav Mudryi National Law University

THE SYSTEM OF NORMATIVE-LEGAL ACTS OF LOCAL SELF-GOVERNMENT IN UKRAINE

The article is devoted to the study of the general and specific features of the system of normative-legal acts of local self-government. It is stated that the formation of system of normative-legal acts of local self-government depends on the specific features of the nature of municipal power, local self-government, its bodies and officials and other institutes. Based on the study, a number of conclusions are drawn regarding the place of acts of local self-government bodies in the system of national legislation, as well as the peculiarities of the formation of the system of normative-legal acts of local self-government in Ukraine.

Key words: municipal power, local self-government, local self-government bodies and officials, territorial community, normative-legal acts of local self-government, system of normative-legal acts of local self-government.

The peculiarities of the formation of a system of normative-legal acts of local self-government are determined by the nature and peculiarities of the formation of the national system of legislation of Ukraine. Today an important role in this process is played by such preconditions and factors as the transitional period of development of the state and society, manifested in the gradual departure from the outdated guidelines and postulates, the adoption of various concepts and strategies of state and legal development as an attempt to determine the direction of further development of the state in the world, as well as the consistent implementation of the action plan for accession to the European Union, which among other things envisages adaptation of domestic legislation to the legislation of the community.

Despite the considerable amount of legislative framework, a large number of normative-legal acts adopted by various bodies of public power, the problems of scientific understanding of the formation of the system, as well as the definition of the structure of legislation are the subject of scientific research. Problems of theoretical and legal understanding of law and legislation were considered by such scholars as S. Aleksieiev, S. Bobrovnik, M. Koziubra, A. Kolodii, V. Kosovych, N. Parkhomenko, P. Rabinovych, O. Skakun, M. Tsvik and others [1; 2; 3; 4; 5; 6; 7; 8; 9].

In such traditional branches of jurisprudence as the theory of law and constitutional law, such concepts as "law", "legislation", and "system of legislation" have no unambiguous interpretation. In particular, in the encyclopedic sources one can find the following meaning: legislation is a system of normative acts (or laws) that regulates social relations [10, p. 499]. Some scholars argue that legislation is a system of interconnected normative legal acts of higher legal force, including the Constitution, constitutional laws and laws [11, p. 20]. There is an opinion that legislation should be understood as a system of all state-regulated laws, as well as international treaties ratified by the parliament. At the same time, it is not necessary of such normative acts to have the form of law. It is important that the Constitution contains references to them as those having the force of law [12, p. 402, 403]. It is also worthy to note the well-established practice of using the term "legislation", which combines laws and regulations. Generally accepted in the practice of law-making, law enforcement and interpretation of law formula "current legislation" is used to refer to the whole set of normative legal acts in force in the state.

The aforementioned discrepancies led to the adoption of the Decision of the Constitutional Court of Ukraine No. 12-rp/98 from 9th of July 1998 (the case on the interpretation of the term "legislation"), which states that the law should be understood as a set of laws and other normative legal acts, which regulate one or another sphere of social relations and are sources of a certain branch of law. Thus, the Constitutional Court of Ukraine has emphasized the existence of two main approaches to the interpretation of the term "legislation": "narrow" and "extended" [13].

In our opinion, when characterizing the legislation as one of the elements of the shaping of law, the instrument of social and legal regulation, as well as the result of law-making activity of various actors, including bodies and officials of local self-government, it is necessary

to use the previously named second, so-called "extended" approach to its interpretation.

Different scientific sources distinguish the same characteristic features of the system of legislation. They usually include the following: 1) the system of legislation is an element of the legal system; 2) the system of legislation has a hierarchical (vertical) structure, that is the location of legal acts in it depends on their legal force; 3) the system of legislation has a horizontal structure, which forms its branches in accordance with the subject of legal regulation; 4) the system of legislation is characterized by integrity, systematic, unified direction of all normative legal acts, their hierarchical ties; 5) the system of legislation has an integrative character, that is, at the same time, is the source of law, as well as the form of its existence.

Taking into account mentioned above, it can be argued that the system of legislation is multidimensional. The idea that this system includes horizontal and vertical measurements is leading in science. The horizontal structure of the system of legislation is most closely related to the structure of the legal system. However, their identity is not spoken. After all, the concept of "system of law" and "system of legislation" are correlated respectively as content and form. Thus, the horizontal structure of the system of legislation includes: 1) legal regulations; 2) normative legal act; 3) the institution of legislation; 4) branch of legislation. The vertical structure of the system of legislation is manifested in the vertical plane, which is expressed in the hierarchical construction of normative legal acts, in their subordinate ties.

Identification of the hierarchy of normative legal acts that compose the system of national legislation is possible only through the analysis of certain constitutional and legal norms and also based on the provisions of domestic legal science, in particular, achievements in the field of the theory of state and law, constitutional law, municipal law etc. In order to solve this problem, it is necessary to find out the place of a public power body in the mechanism of the state and in the system of public power bodies, as well as to identify the nature, scope and limits of its competence.

Traditionally, depending on the legal force of normative-legal acts, it can be distinguished the vertical (hierarchical) structure of domestic legislation, which includes: 1) the Constitution of Ukraine, which has a higher legal force and is the basis of legislation; 2) laws and codes, the main purpose of which is to provide an integrated, comprehensive and holistic solution to those or other tasks of socio-economic development of society; 3) normative decrees and orders of the President of Ukraine, issued in accordance with the Constitution of Ukraine; 4) sub-normative legal acts of central executive bodies of power; 5) acts of local executive bodies; 6) acts of local self-government on the exercise of delegated state powers [14, p. 266].

It can be seen that local self-government normative-legal acts are generally located at a lower level of the national system of legislation, or they represent a lower unit of structure (element of the system of legislation). In our opinion, a significant number of sources of municipal law are adopted at the level of central and local government in the form of normative legal acts. The norms of the municipal law contained in them come from the state and are provided with the possibility of using state coercion. Nevertheless, a large number of sources of municipal law are normative legal acts of local self-government. The peculiarity of the prescriptions contained therein lies in the fact that they, by their very nature, do not belong to the legal norms coming from the state in the face of its law-making bodies.

The rules of conduct contained in the normative legal acts of local self-government, although not issued by the state, however, have a public-power nature, since they are adopted by the municipal power bodies. The latter is an expression of the power of the people, one of the fundamentals of the constitutional system. Therefore, in the legal norms of these acts there is not only the "power of authority" of local self-government, but also the "authority of the municipal power" as a special public power, which is in a single system of democracy [15, p. 113].

In our opinion, in identifying the correlation of normative-legal acts of local self-government with other normative-legal acts in order to determine their place in the system of national legislation, it is necessary to take into account the peculiarities of local self-government and municipal power.

In this context of particularly importance are provisions of Art. 6 and 7 of the Constitution of Ukraine, according to analysis of which (and also taking into account the relevant decisions of the Constitutional Court) local self-government is recognized by the state as an independent level of power exercised by the people. Consequently, along with the recognition of the principle of the division of public power into branches, the Constitution recognizes the existence of such a subsystem of public power as the municipal power, which is implemented through the institutions of local self-government. This subsystem exists along with the subsystem of state power, which indicates the absence of hierarchical links between them.

At the same time, it is important to understand that this does not mean the complete autonomy of the municipal power and institutions of local self-government from the state, since all subsystems and public power bodies form the unified public administration mechanism. In addition, one should take into account the fact that local self-government bodies execute a number of powers delegated by the state, which means they are controlled by the relevant bodies of state executive power. However, control by the state bodies of power should not lead to interference with the activities of local self-government bodies in the sphere of exercising their own powers. In turn, the exclusiveness and completeness of the powers of local self-government bodies are primarily aimed at limiting the possibility of their duplication between executive bodies of local self-government and state executive bodies, as well as between different levels of local self-governments bodies (the negative manifestation of such duplication may be the contention of competence, conflicts between different institutions, "dispersion" of responsibility etc.) [16, p. 12, 14].

Thus, the constitutional separation of state power and local self-government points to the objective existence of two forms of the exercise of public power in Ukraine – state and self-government (municipal), for which there are common features as well as different ones, in particular, specific, subjective-object and functional characteristics, the study of which reveals their content and essence [17, p. 12]. In this case, the municipal power should not be completely opposed to the state. After all, the direction of the activities of both state and local self-government bodies of power is determined by the rights and freedoms of human and citizen. First of all, it is a question of the rule of law and its relation with the principle of legality.

Considering the above mentioned, it is possible to draw a conclusion on the so-called dual nature of local self-government, which manifests itself both in the presence of the public-power component and the public basics. It seems that this position was underpinned in the provisions of the current legislation, taking into account the wording: "recognized and guaranteed ..."; "... the right of a territorial community ..."; "the right and real ability guaranteed by the state ..."; "...have the power to adopt normative and other acts in the form of decisions ..." and others. At the same time, being on the one hand, natural law, and on the other – public power institution, with the help of which the will of the members of territorial community is objectified by the bodies and officials of local self-government, have the right to resolve issues of local importance, including by adopting normative-legal acts. Normative-legal acts, which adopted by their bodies and officials, may also be adopted in the framework of the exercise of the delegated (state) powers.

Therefore, it is possible to state the recognition and guarantee by the state of the right of bodies and officials of local self-government to resolve issues of local importance on behalf and in the interests of the territorial community within the limits of the Constitution and laws of Ukraine under its own responsibility. It is a question of the existence of primary normative competence – the right to adopt normative-legal acts in order to resolve issues of local importance, mostly, within their own and/or exclusive powers of these bodies arising from the peculiarities of their nature.

And moreover, one should pay attention to the fact that today the legislation enhances the possibilities of local self-government: by defining the powers of its bodies and officials; by separating them from the powers of the state (in the person of its bodies and officials); by extending of the normative competence of the local self-government (including in the future, which can be reflected in the relevant changes and additions, as well as in the concepts of reforms, plans and development programs); by defining the legal nature of normative-legal acts of local self-government in the national legal system; by recognizing the possibility of judicial protection, in particular, the right to be a plaintiff (Art. 181 of the Law of Ukraine "On local self-government in Ukraine") and so on. At the same time, considering the constitutional and legal regulation and the real state of affairs, even the most developed and democratic states of the world can't completely refuse the practice of delegation of powers from bodies of state power to local self-government bodies. Thus, we can speak of the existence of so-called "sanctioned rule-making".

The direction of the activities of both state and local self-government bodies, as stated above, determines the rule of law principle (Article 8 of the Constitution of Ukraine). This principle essentially means the subordination of the state and municipal power, their institutions to human rights, the recognition of the priority of the right in any positive activity of public power (including the development and adoption of local self-government normative-legal acts) [18].

In particular, the priority of human rights involves the recognition of its rights and freedoms as a higher social value. Through the principle of the rule of law, the inalienable rights of a person and citizen to freedom, equality, respect for honor and dignity are

guaranteed. Therefore, rule-making activity should be carried out with the strict observance of this condition, and the aim of the process of drafting and adoption of normative-legal acts (including local self-government normative-legal acts) should be to ensure and protect the inalienable rights of citizens. The limitation of state and municipal power by the law means that freedom in society is possible only under conditions when public authority is restricted to and is under control of the law, as well as when public authority interacting with civil society within the limits defined by law. In turn, legal certainty is a condition by which citizens have the opportunity to anticipate the consequences of their actions, which follow from their consolidation in the texts of normative-legal acts. Compliance with the rule-making subject of clear rules regarding the form and content of normative-legal acts serves as a guarantee of their implementation. Conversely, non-compliance with the requirements regarding the form and content of such acts may lead to their recognition as unconstitutional and therefore ineffective [18].

The compliance of the normative act with the law (or "domination of legal acts") implies compliance with the constitutional requirement of the legal nature of the normative-legal acts, which means that the law "reflects" (as provided for by the Constitution) human rights "in full", as well as the direct effect of such a normative-legal act. The narrowing or restriction of human rights in a normative-legal act entails its illegal and unconstitutional nature and is subject to consideration by the Constitutional Court in order to establish its conformity with the Constitution of Ukraine. Such actions may indicate the ignorance of human rights and mean the denying of the law and its supremacy in rule-making activities.

Local self-government normative-legal acts, along with other normative-legal acts, are often characterized as bylaws. First of all, the fact is that despite the existence of a separate subsystem of public power – the municipal power, as well as the independence of local self-government institutions, legal, organizational, material and financial independence are determined by the Constitution and laws of Ukraine. Consequently, the peculiarities of the existence of a territorial community ("hromada"), as well as the establishment and functioning of local self-government bodies and officials, which are determined by the charter of a territorial community, by regulations of a local council ("radas"), by the other bodies' provisions, are primarily determined at the level of laws. Therefore, the normative-legal acts of local self-government must comply with the Constitution and laws of Ukraine, based on the principle of legality.

Given the fact that, on the one hand, hierarchical subordination between state power and local self-government does not exist, and, on the other hand, that the latter is a part of a single system of public authority in the state, it should be stated that the normative-the legal acts of local self-government, as well as other subordinate legal acts, can not contradict the laws of Ukraine, should be aimed at their implementation, regardless of whether it is a question of resolving issues of local importance, or the execution of delegated by the state powers.

At the same time, in our opinion, the system of local self-government normative-legal acts is relatively conditional located at the lower level of the system of national legislation. After all, given the peculiarities of the municipal self-government, the subordination between the latter and the bodies of state power in a democratically organized society can't exist. That is, the system of local self-government bodies is not part of the hierarchical structure of the state power system. Instead, the control over the activities of local self-government bodies can only affect the issue of the legality of the acts of local self-government bodies and officials, as well as the execution of the powers delegated by the bodies of state power.

It should also be noted such a feature of local self-government system as the absence of subordinate links in it. That is, it can only be about the nature of the local self-government and its bodies, and not about their subordination. Taking into account the above, it can be argued that the system of legal acts of a specific territorial community is presented by two elements: the normative-legal acts of representative bodies of local self-government ("radas"); regulatory acts of other local self-government bodies (primarily, executive and regulatory bodies).

So, at present, the system of normative-legal acts of local self-government as a phenomenon of reality is at the initial stage of formation. Using this wording, we seek to emphasize the fact that local self-government in Ukraine is still in the transformational phase of its existence and is constantly faced with barriers to asserting its genuine effectiveness and efficiency. In addition, one should take into account the fact that in each administrative-territorial unit, each territorial community, through its activities (first of all its bodies and officials) form their own system of acts, which includes the normative and other acts of local self-government.

Thus, taking into account the nature of the municipal power and local self-government,

especially their relationship with the state power, as well as the peculiarities of the structure and functioning of the system of state power bodies, local self-government, the structure and links of elements of the legislative system, we believe that the following conclusions can be drawn: 1) the system of legal acts of local self-government – a unified system of legal acts of the respective administrative-territorial unit, a territorial community and includes acts of normative-legal and others; 2) the system of normative-legal acts of local self-government is the result of the activity of a separate subsystem of public power – the municipal power, which is implemented through the institutions of local self-government; 3) the system of normative-legal acts of local self-government is represented by two components (taking into account the amount of such acts and also the absence of mechanism of realization of the right of territorial community to take decision (including a form of a normative-legal act) on their own): a) regulatory acts of local self-government, which come from representative bodies of local self-government; b) normative acts coming from other local self-government bodies; 4) the system of normative-legal acts of local self-government is an integral part of the structure of the system of the national legislation of Ukraine; 5) system of legal acts of local self-government is a separate sub-system of normative-legal acts of local self-government which can be characterized as bylaws.

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Стаття присвячена вивченню загальних та специфічних рис системи нормативно-правових актів місцевого самоврядування. Встановлено, що формування системи нормативно-правових актів місцевого самоврядування залежить від особливостей характеру (природи) муніципальної влади, місцевого самоврядування, їхніх органів і посадових осіб та інших інститутів. На основі проведеного дослідження зроблено низку висновків щодо місця актів органів місцевого самоврядування в системі національного законодавства, а також особливостей формування системи нормативно-правових актів місцевого самоврядування в Україні.

Ключові слова: муніципальна влада, місцеве самоврядування, органи та посадові особи місцевого самоврядування, територіальна громада, нормативно-правові акти місцевого самоврядування, система нормативно-правових актів місцевого самоврядування.

Статья посвящена изучению общих и специфических черт системы нормативно-правовых актов местного самоуправления. Установлено, что формирование системы нормативно-правовых актов местного самоуправления зависит от особенностей характера (природы) муниципальной власти, местного самоуправления, его органов и должностных лиц и других институтов. На основе проведённого исследования сделан ряд выводов о месте актов органов местного самоуправления в системе национального законодательства, а также особенностях формирования системы нормативно-правовых актов местного самоуправления в Украине.

Ключевые слова: муниципальная власть, местное самоуправление, органы и должностные лица местного самоуправления, территориальная община, нормативно-правовые акты местного самоуправления, система нормативно-правовых актов местного самоуправления.