

Municipalities in the System of Territorial Organization of Public Authority in the European Countries: Prospects for Ukraine

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Abstract

The article focuses on the issues of European integration of Ukraine through the lens of implementing municipalities at the lowest (basic) level of territorial organization of local self-government, which is relevant given the current decentralization reforms aimed at bringing the local self-government system closer to the European model of local democracy. For this purpose, the article analyzes the experience of organization and functioning of municipalities in European countries. The study employs a comprehensive methodology, including formal-legal, dialectical, and prognostic methods, as well as methods of comparative analysis and synthesis. The study reveals the three-component structure of a municipality, which consists of territory within defined boundaries, the population of this territory, and governing bodies. The authors emphasize the importance of comprehensive understanding of municipality, warning against reducing it merely to the territorial aspect, as such approach does not solve the problems of low public activity and ineffective governance. The paper analyzes the European model of local self-government, where the fundamental principle is the recognition of local communities or administrative-territorial units as bearers of legal rights and obligations, rather than local councils or their executive bodies. The study questions the expediency of maintaining the institution of territorial community in current Ukrainian legislation, arguing this with insufficient integration of local self-government bodies with the territorial community and territory. It is concluded that in Ukraine, communal property is formed taking into account the corporate model (with population – territorial

community – defined as the owner). Significant inconsistencies between the elements of the corporate model of local self-government and peculiarities of Ukraine's legal system have been identified, indicating necessary directions for reform in implementing municipalities. It is proposed to establish the triune structure of municipality, defining the interdependence between territory, population, and the system of local self-government bodies. This approach will facilitate effective implementation of European standards in the organization of municipal government in Ukraine.

Keywords: *local self-government; municipality; territorial organization of local self-government; European standards of local self-government.*

Муниципалітети в системі територіальної організації публічної влади європейських країн: перспективність для України

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Анотація

Стаття присвячена проблематиці європейської інтеграції України через призму впровадження муниципалітетів на найнижчому (базовому) рівні територіальної організації місцевого самоврядування, що є актуальним з огляду на сучасні реформи децентралізації, спрямовані на наближення системи місцевого самоврядування до європейської моделі локальної демократії. З цією метою проаналізовано досвід щодо організації та функціонування муниципалітетів у країнах Європи. У роботі застосовано комплексну методологію, що включає формально-юридичний, діалектичний та прогностичний методи, а також методи порівняльного аналізу та синтезу. У роботі розкрито трикомпонентну структуру муниципалітету, яка складається з території у визначених межах, населення цієї території та органів управління. Наголошено на важливості

комплексного розуміння муніципалітету, застерігаючи від його редукції лише до територіального аспекту, оскільки такий підхід не вирішує проблем низької громадської активності та неефективного управління. Проаналізовано європейську модель місцевого самоврядування, де фундаментальним принципом є визнання місцевих громад або адміністративно-територіальних одиниць носіями законних прав та обов'язків, а не місцевих рад чи їхніх виконавчих органів. Дослідження ставить під сумнів доцільність збереження інституту територіальної громади в сучасному українському законодавстві, аргументуючи це недостатньою інтеграцією органів місцевого самоврядування з територіальною громадою та територією. Сформульовано висновки, що в Україні комунальна власність сформована з урахуванням корпоративної моделі (власником визначено населення – територіальна громада). Виявлено суттєві невідповідності між елементами корпоративної моделі місцевого самоврядування та особливостями правової системи України, що вказує на необхідні напрямки реформування при впровадженні муніципалітетів. Запропоновано законодавчо закріпити триєдину структуру муніципалітету, визначивши взаємозалежність між територією, населенням та системою органів місцевого самоврядування. Такий підхід сприятиме ефективній імплементації європейських стандартів організації муніципальної влади в Україні.

Ключові слова: міське самоврядування; муніципалітет; територіальна організація місцевого самоврядування; європейські стандарти місцевого самоврядування.

Introduction

The basic structural unit of the territorial organization in European states is a community, which has various terminological variations (municipality, commune, gmina, etc.). Such unification of administrative-territorial units at the basic level creates objective preconditions for forming homogeneous approaches to their functioning, development, and provision of public needs.

The community, integrating territorial, demographic, and power components, where the latter is implemented through local self-government bodies or directly by the population, acquires the status of a full-fledged subject of public-power relations. In fact, it functions as a specific public corporation that has its own interests protected by the judicial system, yet operates exclusively within the legal framework and under state and public control.

In the context of terminological discussion, it should be noted that the proposal by domestic scholars (O.M. Boryslavska, A.P. Zaiets, O.V. Ilnytskyi, V.S. Kuibida, R.A. Maidanyk) to replace the legally established concept of "territorial community" (which reflects only the administrative-territorial aspect) with a more comprehensive concept of "community" (encompassing

both administrative-territorial and self-governing components) [1, p. 11] does not resolve the problem of terminological ambiguity. This situation highlights the need to define the terminological apparatus more precisely.

Therefore, it must be acknowledged that the issue of implementing municipalities or communities at the local level in Ukraine requires addressing both terminological and functional-organizational matters.

This study aims to conduct a scientific analysis of "municipality" as a legal category, to reveal its essence and relationship with related legal concepts, to determine its content and level of prevalence in European states, and to outline possible directions and prerequisites for its application in Ukraine.

Based on this objective, the article addresses the following research task:

- to assess the extent and scope of legal regulatory frameworks of the concept of "municipality" in national legislation and directions of its application;
- to outline the essence of the concept of "municipality", identify its key elements (components) and characterize their role in the organization of municipal governance;
- to identify related legal categories that are close in content to the concept of "municipality", in particular, community, administrative-territorial unit, and show their relationship;
- to establish foreign experience and practice of using the concept of "municipality", characterize the content and significance of this category in European countries;
- to demonstrate the importance of implementing municipalities in Ukraine in the context of its European integration and propose directions for improving domestic legislation in the field of local self-government.

Literature review

Some issues of reforming the basic territorial level towards implementing a comprehensive administrative-territorial unit following the practices of European countries have been analyzed by such scholars as I.I. Bodrova [2], S.H. Serohina [3], M.I. Titov [4], A. Tkachuk [5], O. Peresada [6], N. Gavkalova [7], M. Petryshyna [8] and others. Among foreign researchers studying territorial organization of local self-governance in European states, it is worth noting J. Boggero [9], who thoroughly described the defining features of European constitutional legislation on local self-government and municipalities, particularly using both international and comparative legal perspectives, emphasizing existing differences between local self-government systems in Europe and the necessity of establishing a coherent framework of constitutional principles, uniformly applied within

the European legal area, based on the principles outlined in the European Charter of Local Self-Government. H. Neuhofer [10] comprehensively examines the organization and tasks of Austrian municipalities through comparison between federal lands from constitutional law perspective, local political perspective, addressing the understanding of municipality in the EU as a whole. Legal characterization in a brief, modern, and synthetic form, providing a concise overview of the key aspects of legal regulation for local authorities in the 27 EU member states, is contained in the publication under the general editorship of A.M. Moreno [11].

Materials and Methods

The object of analysis included both normative legal acts of Ukraine and European states, writings of Ukrainian and foreign researchers, international legal documents and publications of international organizations.

To achieve the stated purpose, a complex of methods was used: dialectical (for objective and comprehensive understanding of the municipal institution in foreign countries, considering various factors (in particular, political-territorial structure), in development), formal-legal (to establish the content of legal norms, analyze their application practice and to formulate author's approaches and conclusions), methods of analysis and synthesis (for analyzing the constitutional legislation of Ukraine and European states regarding the local self-government organization) and others. The comparative legal method was applied as the primary method (for comparing European and Ukrainian approaches regarding the nature of municipality and developing practical recommendations for optimizing the structure of local self-governance in Ukraine). The use of the generalization approach through establishing common properties and features of the legal status of municipalities in European countries enabled the formulation of conclusions about the possibility of implementing such an institution in Ukraine. The prognostic method was used for developing research conclusions and formulating further directions in searching for possible ways of organizing local self-governance in Ukraine. The involvement of a broad methodological base in the research makes its provisions complete and well-founded.

Results and Discussion

Despite the introduction of a scientific specialty in municipal law in Ukraine and numerous textbooks on this scientific discipline, the definition "municipality" in its classical understanding and meaning (as perceived in European countries) has not been adopted into Ukraine's legislative system. Simultaneously, this category is used in some legal acts, both in

content and titles. In particular, "On authorizing O. Kuleba to sign the Letter of Waiver of certain conditions and amendments to the Financial Agreement (project 'Municipal Infrastructure Development Program of Ukraine' between Ukraine and the European Investment Bank" [12], Some issues of reimbursement of childcare service "municipal nanny" during martial law and for three months after its termination or cancellation [13], On attracting credit and grant from the Credit Institution for Reconstruction ("KfW") for the implementation of the project "Municipal Water Management Project of Chernivtsi, Stage 2" (Municipal Climate Protection Program II) [14], and others. All these and other acts emphasize the quite widespread use of the category "municipal" in domestic legislation, however without a precise definition or explanation of its nature and substance. A variant of this category is the concept of "municipality". It has a direct connection to the organization of local self-government as a type of public authority at the local level.

For achieving the purpose of this article, the defining of the essence of the concept of "municipality" is crucial. According to M.I. Titov, "municipality" (from Latin *municipium* – self-governing unit) is used in many countries to denote the smallest (basic) administrative-territorial unit governed by an elected body [15, pp. 287-288]. Thus, the author reduces the nature of municipality to merely designating an administrative-territorial unit.

In December 2021, the Centre of Expertise for Good Governance of the Department of Democracy and Governance of the Directorate General of Democracy of the Council of Europe proposed a set of recommendations regarding the implementation of legal personality at the local level in Ukraine [16]. Analyzing European experience and considering the European Parliament resolution from February 2021, which calls for implementing the definition of administrative-territorial unit as a legal entity, one can identify fundamental aspects for further transformation of the local self-government system in Ukraine. Within the Council of Europe, a unified, though sufficiently flexible, approach to defining legal personality at the local level has been formed. According to the Explanatory report, local authorities should be interpreted as territorial public entities characterized by their own legal personality [17, p. 43].

This raises the key question, the answer to which is crucial for further reforms in Ukraine: wouldn't it be more appropriate to replace the current approach (which, although not contradicting the European Charter, creates much confusion into the perception of these social relations, as will be demonstrated below) with a clearer and more unambiguous one? Wouldn't it be more appropriate to move from the practice of granting legal personality to various local authorities as representatives of territorial communities to

the concept of legal personality of municipalities as a generalizing triune category of "territory – population – self-government bodies"?

It would be worthwhile to proceed from the generalized European model implemented by most member states of the Council of Europe, which fundamental principle is the recognition of local communities or administrative-territorial units (rather than authorities – councils or their executive bodies) as bearers of legal rights and obligations.

Considering the experience of other countries, which developed during the long evolution of local self-government and especially in European countries, it can be noted that a "municipality" is represented by a complex combination of several elements. Among them, first, is territory, which occupies a central place as it serves as a spatial factor in the organization of public authority. It has its classification, division into certain types, which affects the legal status of the municipality as a whole. Second, a constituent element of the municipality is the population of such territory. Third, the municipality includes a system of governing bodies for such territory. All of these are considered inseparable from each other, which ultimately allows us to speak about the existence of a holistic "municipality". Furthermore, municipal property serves as an important factor of the municipality itself. In this regard, it is essential to analyze the structural elements of municipality and understand the theoretical and practical possibility of its implementation in Ukraine. In light of the European integration processes actively conducted in Ukraine, it will inevitably face the question of implementing the European approach to local self-government organization, where municipality serves as a fundamental unit of authority structure.

Across numerous European countries, constitutional frameworks increasingly codify and protect the legal standing of municipal entities, although in some jurisdictions this matter is regulated by general or special legislation [18-20]. The regulation of local self-governance is substantially influenced by the form of political-territorial structure: in federal states, the fundamental principles of local self-government organization are articulated in the federal constitution, while their further elaboration is carried out at the level of legislative acts of the federation subjects (Austria [21], Federal Republic of Germany [22]). Belgium's legal system presents a particular scientific interest, where, unlike other European states, the legal status of municipal entities is based on customary law norms, which is historically conditioned.

In comparative analysis of European states' legal systems, there is variability in the application and interpretation of the term "municipality". In many European states, this term is used to denote a basic territorial

unit (for instance, in Bulgaria [23],¹ Portugal [24], Romania [25], Slovakia [26]² and Spain [27]). Similarly, in some states (for example, in Poland [28], Germany³), this term is used to denote a community, while municipal authorities are excluded from the scope of this concept. In Greece [29], the term "municipality" has a dual nature, encompassing both the territorial entity and its administrative bodies. A somewhat different interpretation is observed in countries such as Denmark [30] and France [31],⁴ where the concept of "municipality" correlates primarily with local authorities, including mayors and municipal councils. Special mention should be made of the common usage of the term "municipality" in many countries, where it is employed not to signify the community as such, but is associated with the authority or complex of services provided within local self-government. The legislation of such states as Moldova [32]⁵ and Romania [33],⁶ uses the Latin version of the term "municipium" for cities, while in Portugal it represents a level of local government higher than primary parishes [34].⁷

The granting legal personality to municipalities opens prospects for significant improvement of the existing conceptual model, which involves optimizing internal structure, rationalizing relationships with citizens and central authorities, as well as strengthening democratic governance

¹ Art. 136 of the Constitution: Municipality is the basic administrative-territorial unit in which local self-government is exercised. Citizens participate in municipal governance both through their elected local self-government bodies and directly through referendum and general population meetings. Municipal boundaries are determined after polling the population. The municipality is a legal entity.

² The term "municipality" applies only to the territorial unit, while the municipal bodies are the mayor and municipal council.

³ The term "Gemeinde" (municipality) denotes the municipality as a territorial community. The defining characteristics of a municipality as a territorial community are the municipality's residents and municipal territory, which together constitute the local community. The bodies (mayor or council) of the municipality are not defined by the term "municipality".

⁴ Currently, the term "municipality" is almost ignored by law, but it is still used in everyday language to denote the representative body (municipal council) and executive body (mayor) of the commune. Sometimes the term "municipality" is used in a more limited sense, to denote only the municipal executive authority.

⁵ According to Art. 7 of the Law on Administrative-Territorial Organization of the Republic of Moldova, the term "municipium" denotes an urban settlement with a special role in the country's economic, socio-cultural, scientific, political, and administrative life. That is, the term "municipiu" indicates large cities with special status. This understanding is also used in Art. 5 of Law No. 436/2006 on Local Public Administration. Retrieved from https://www.legis.md/cautare/getResults?doc_id=144148&lang=ru.

⁶ Art. 105 of the Administrative Code of Romania establishes that local autonomy is exercised by local government bodies at the level of communes, cities, municipalities (municipii), and counties.

⁷ The concept of "municipality" applies only to the corresponding territorial unit, not to the local authority (councils or their executive bodies). See also: Art. 3 of the Law of the Republic of Portugal "On the Legal Regime of Local Authorities".

mechanisms. In the long term, a transformation of the social paradigm and consolidation of belief in the priority role of individuals in the local self-government system is predicted. The realization of this concept potentially contributes to simplifying interaction mechanisms between representative and executive bodies of local self-government.

From citizens' perspective, increasing transparency and enhancing the functioning of local government, its structural units is undoubtedly a positive factor. The current state is marked by the existence of numerous communal legal entities (communal services, enterprises), whose activities are often determined by narrow departmental interests, generating conditions for competency conflicts, diminished transparency, inefficient use of financial resources, which shapes the corresponding public perception of this situation.

Territory as a structural element of municipality

Territory serves as a key element in the structure of municipality. It is an area for exercising municipal power and delineates the boundaries of its implementation. The regulatory jurisdiction of municipal authorities is confined within their territorial boundaries. Furthermore, it enables self-organization of the population residing in this territory. Legislation defines specific types of territories. Traditionally, these are the respective territorial-administrative divisions upon which a municipality is established. In Ukraine, administrative-territorial units include village, settlement, city, city district, district, and oblast. However, not all of them can serve as a territorial foundation for municipal structure. Primarily, these can only be basic-level territories within which population resides. Regions, subregions, districts, etc. have a completely different purpose than basic-level territories, therefore organization of municipalities is possible only at the lowest territorial level. In this regard, among the above-mentioned administrative-territorial units, organization of municipalities is possible only based on villages, settlements, and cities.⁸

The normative definition of municipality in the Slovak Republic is established in Para 1 of Act. No. 369/1990 on municipal formation: a municipality is constituted as an autonomous territorial self-governing and administrative unit that integrates persons who have permanent residence in the respective territory.

⁸ We see a similar approach in Romania, where according to the Constitution, the territory consists of communes, towns, cities, and counties. The first three form the first level of local self-government (municipalities); counties are an elected second level. For historical reasons, about 100 large cities have received the name "municipium", which should not be confused with the more general term "municipality" that applies to the entire first level.

The legislator grants municipalities the status of legal entities which, within legally established parameters, independently exercise authority over the administration of their property and financial resources. In accordance with Para 2 of the aforementioned law, the territorial structure of a municipality may consist of one or more cadastral territories.

The constitutional and legal status of municipalities is regulated by Art. 64 of the Basic Law of the Slovak Republic, where municipality is recognized as the fundamental unit of territorial self-government.

The territorial self-government system is structured on two levels: municipal and regional (self-governing region). In accordance with Para 1 of Art. 65 both levels of territorial self-governance are distinguished by legal entity status, granting them the right to independently manage property and financial resources within the bounds of the law [35]. The Slovenian legislator demonstrates the same approach, referring to municipalities and provinces in Articles 139-143 of the Constitution [36].

The analysis of European states' legislation demonstrates that history, national composition, territory size, state population, and other factors decisively influence local government organization. In Spain, municipalities are the basic local entities of the state's territorial structure, which unite into provinces. The provinces themselves can form autonomous communities (regions), while local self-government legislation regulates the formation of administrative-territorial units smaller than municipalities that retain their historical names, are defined by the absence of a distinct legal status, and function within a deconcentrated system of territorial governance [37].

Ukraine's territorial system has become increasingly complex due to the decentralization of power reform and the formation of "territorial community territories". A territorial community territory is an area that emerged from the voluntary union of several territorial communities. In other words, in the decentralization reform, it was not territories that united, but rather the residents of these territories (territorial communities), which resulted in changes (consolidation) to the territorial ground of their residence and activities, and consequently, the territorial basis for local self-governance functioning.⁹ As a consequence, the territory became the ground for the functioning of the basic level of local self-governance and acquired the necessary characteristics for the possible organization of separate municipalities within its boundaries. Meanwhile, the previously mentioned

⁹ In general, processes of consolidation/transformation of municipalities are observed in many European states (Bulgaria, Portugal, France, etc.). However, proper legislative regulation minimizes negative manifestations and does not worsen the implementation of good governance principles and participatory democracy for local residents.

administrative-territorial units (village, settlement, city), which existed before the process of voluntary amalgamation of territorial communities, lost these characteristics: in particular, they lost the ability of forming their own local self-government bodies. Since the voluntary amalgamation of territorial communities, such bodies are formed as single entities for the entire territorial community. Furthermore, the social foundation and legitimate subject is now considered not the residents of this administrative-territorial unit, but the entire unified territorial community (a kind of "collective mind"). Thus, currently only territorial community territories can be considered as a ground for municipality formation.

Meanwhile, such territory has several disadvantages and issues with legal regulation. First, we observe the absence of constitutional recognition of such territory and its enshrinement in the Basic Law, which does not provide full guarantee of its preservation in national legislation. Second, such territory consists of several administrative-territorial units, each of which still continues to maintain a certain level of legal personality. Third, unlike the experience of foreign countries, such territory is not a subject of municipal property rights and is not endowed with representative functions.

All of the aforementioned factors together create confusion, which does not promote residents' sense of accessibility, proximity, transparency, and understanding of local government. In contrast, there is an increasing perception of local governance detachment and the impossibility of citizens' real effective influence on decision-making processes, resolution of local issues, and so forth.

The domestic experience of local self-government territorial organization shows that representative functions concerning the population are performed not by the municipality (territory) but exclusively by local self-government bodies, while the residents themselves act as the subject of communal property rights.

Another important characteristic that territory acquires as "municipality" is the ability to obtain and exercise powers. This derives from the common definition of municipality as a distinct administrative-territorial unit that has self-governing status and is endowed with powers in its territory in accordance to national or regional legislation.¹⁰ The domestic model of territorial organization of local self-government gives the ability to exercise powers to local self-government bodies. Primarily, Art. 19 of the Constitution

¹⁰ Municipality is a political-administrative unit with its own territory; it bears responsibility for local self-government, which is guaranteed to it by legislation. As local authorities, municipalities are legal entities of public law with their own statute, budget, and employees (translated by author). Retrieved from <https://wirtschaftslexikon.gabler.de/definition/gemeinde-34664>.

of Ukraine stipulates those public authorities, their officials are obliged to act only based on within the powers and in the manner prescribed by the legislation of Ukraine. Even though the Basic law establishes a system of administrative-territorial units, it does not endow them with powers, rejecting their integration with local self-government bodies into a unified system that could be called a municipality. Furthermore, an administrative-territorial unit can only obtain the ability to exercise powers in case of certain transformation of its legal status from purely territory into another legal status – that of a public authority entity [38, p. 50].¹¹ Such transformation can be ensured, in particular, through the mechanism of registering such an entity, resulting in it acquiring corresponding powers, including representative ones. In foreign countries, this may involve the territory acquiring the status of a legal entity, which continues to be a matter of debate in the context of the ongoing development of local self-governance in Ukraine.

In most European countries, a municipality has legal personality regulated by public law (for example, Belgium, Czech Republic, Poland) and has the legal entity' status (for example, Bulgaria, France, Germany, Portugal, Romania, Slovenia).

Population of territory as a structural element of municipality

The population of the respective territory plays an important role in municipality formation. Pursuant to Ukrainian legislation, the absence of inhabitants in the respective territory constitutes grounds for liquidation of the corresponding administrative-territorial unit (Part 7 of Art. 5 of the Law of Ukraine "On the Procedure for Resolving Certain Issues of the Administrative-Territorial Structure of Ukraine" [39]). In Ukraine, the social foundation of local self-government is viewed as a certain community. This emphasizes that the realization of local self-governance is a "collective" matter. For this purpose, the concept of "territorial community" has been introduced, which denotes all residents of the relevant territory. The realization of local self-governance is reduced to the functional activity of such a collective subject.

The inclusion of such a subject in the mechanism of local self-government implementation can be assessed ambiguously. On one hand, it indicates the widening of the principle of people's power to the local level and widespread use of democratic processes. In contrast, practical issues arise concerning the existence of the territorial community and its exercise of people's power.

¹¹ This is all the more justified because the frequently used phrase "local self-government body" is incorrect, as an authority body (council, mayor) cannot be "self-governing". It is the administrative-territorial unit that manages its own affairs through its elected bodies. The level of its self-governance depends on the degree of real decentralization in each individual country.

First, this subject is not permanent or established, as its personal composition constantly changes. This has become particularly evident during the war due to population displacement, with some territorial communities ceasing to exist entirely. Second, membership in a territorial community solely based on residence registration has also proven ineffective. Situations arise where a person is only formally a territorial community' member through registration but does not participate in local affairs due to actually living elsewhere. Third, its legal status is unclear, as it emerges automatically, requires no creation or registration mechanisms, and is not an authority body. Fourth, assigning the ability to implement corresponding forms of participation and resolve issues of local significance specifically to territorial communities is quite dubious, as all territorial community' members never participate in such forms.

Attention should be drawn to the specificity of public perception regarding the idea of registering territorial communities as legal entities. This issue acquired negative connotations in public discourse significantly earlier than the matter of reforming territorial communities' legal personality became actualized at the state policy level. The formation of such negative perception was driven by destructive activities of illegitimate entities that positioned themselves as registrars of territorial communities. In the past decade, a trend toward the spread of the so-called "fake communities' virus" has emerged, representing the phenomenon of self-proclaimed registration of territorial communities without proper legal grounds or authority [40, p. 5].

All this raises the question of whether it is necessary to maintain such an entity as territorial community in national legislation, or simply abandon it by endowing the territory's residents with elements of its legal personality.

It should be noted that the model of territorial community somewhat contradicts the one enshrined in the European Charter of Local Self-Government. It does not contain such a subject. However, it extensively operates with the concepts of "local population" and "citizens".

While positioning local self-government bodies in the foremost place in the mechanism of municipal power implementation, the Charter does not deny the possibility of direct citizen participation in governance. However, it does not make them a specific subject but rather considers each of them as a separate participant in municipal-power relations.

In the aspect of municipality formation, it would be reasonable to discontinue the use of the term "territorial community" and instead introduce "municipality population" or "municipality residents". This would emphasize the social component of the municipality while reducing the

dependence of local affairs resolution on the participation of the collective subject in its entirety.

Local self-government bodies and officials play a central role in managing local affairs in Ukraine. While the residents of the territory play a significant role in the forming of the system of administrative bodies and monitoring their work, they are significantly limited in their ability to independently resolve issues of local importance. The system of participation forms established in legislation and the specifics of implementing these forms in practice indicate their limited application by the population. Therefore, local self-government bodies come to the forefront in exercising municipal power.

As noted, they are dependent on and controlled by the territorial community, as established by the Law of Ukraine "On Local Self-Government in Ukraine" (Art. 75). However, such legislative provisions are somewhat formal, since the bodies themselves act as the subjects responsible for organizing the territorial community and its forms of participation. This indicates that local self-government bodies are not fully integrated with the territorial community (population) and the territory itself.

According to the provisions of the Constitution of Ukraine (Art. 140) and the Law of Ukraine "On Local Self-Government in Ukraine", local self-government bodies manage local affairs rather than the territory itself. Territorial management is secondary; it occurs in one way or another when resolving local issues. However, this approach also does not ensure the integration between the territory and local self-government bodies, which is especially crucial in establishing a municipality.

In Republic of Slovenia, the Czech Republic, legal personality at the local level is held by the municipality itself, rather than by its internal bodies (such as the municipal council, municipal committee, or mayor).¹²

It is noteworthy that the legislator tries in any way to combine local self-government bodies and the population. With this approach, the territorial community is endowed with characteristics that are not inherent to it. In particular, Part 1 of Art. 12 of the Law of Ukraine "On Local Self-Government in Ukraine" establishes that the village, settlement, or city mayor is the chief official of the territorial community. This leads to several concerns. First, if they are the chief official of the territorial community, then there should be others within the structure of the territorial community who are subordinate to them. However, no other official is defined as an official of the territorial community. Second, the territorial community is not a local self-government body and therefore does not have its own organizational

¹² The key attributes of a municipality according to Law No. 128/2000 on municipalities (municipal formation) are the community of citizens, territorial unit, and corresponding property.

structure, which follows from Art. 140 of the Constitution of Ukraine and Art. 1 of the Law of Ukraine "On Local Self-Government in Ukraine", which define the territorial community as residents united by permanent place of residence. Thus, the mayor should be defined as the chief official of the local self-government body. However, this approach would define their relationships specifically with the management system rather than with the population.

In essence, the described approach introduces and legalizes a corporate governance model at the local level in Ukraine, where the territorial community (residents) represents a prototype of a certain corporation or business entity (company, etc.), which has a management system in the form of local self-government bodies (similar to a board of directors or supervisory board of a company) and an adopted statute of the territorial community as the main corporate act. However, such relationships are not characteristic of our legal system, in which local self-government bodies are public authorities that manage public affairs in their respective territories, whose acts are mandatory for implementation, and cannot be reduced to an element in the system of corporate relations.

A significant role in such corporate model is assigned to property. In Ukraine, communal property was formed precisely taking into account such a corporate model (with the population – territorial community – defined as the owner). However, such model is not acceptable for the national legal system, which once again indicates the directions of changes in the process of employing municipalities in Ukraine.

Conclusions

The domestic legislator quite cautiously applies the category of "municipality" and "municipal" to designate the relevant sphere of social relations connected with the functioning of local self-government. It attempts to introduce its own legal categories to designate the institutional-territorial basis for local self-government development, using "hromada" for this purpose and explaining this through its own historical tradition. However, the intersection of etymologically identical but different in content categories – "hromada" and "territorial hromada" – does not facilitate their perception by the population and introduces elements of legal uncertainty into legislation. This requires a review of the existing terminological framework and the implementation of the European countries' model based on municipalities. Consequently, we propose to establish this concept at the constitutional level and detail it at the level of law.

We propose to establish the key elements (components) of the municipality (territory, population and the system of local self-government bodies

operating within the respective territory) and define their interdependence. This will lay the foundation for each municipality, through its population, to choose its own model of municipal power organization in the future (independently determining the name and types of local self-government bodies that the population will form in their territory). This will allow to implement the necessary level of population autonomy in organizing local government, experimenting with relevant institutions, and, finally, to forming the most functional model of managing the respective territory, taking into account its size, population, predominant means of production, sources of local budget revenue, etc.

Meanwhile, only the most crucial issues of organization and functioning of local self-government should be regulated at the level of the special Law of Ukraine "On Local Self-Government in Ukraine". This will allow for the implementation of one of the most important European standards of municipal power organization – where local self-government bodies act at their own discretion within the limits not prohibited by legislation.

It should also be noted that the incorporation of municipality as a threefold category will enhance the population's role in managing local affairs and allow for broader use of local democracy forms, including influencing the activities of local council deputies.

Obviously, implementing the new legal institution of "municipality" will require lengthy and thorough work on amending various legislative acts, as well as a transition period during which special regulation of previously existing legal relations will operate. This requires political and administrative will to implement such a model. However, the effectiveness and appropriateness, along with significant democratic advantages, are also evident - municipalities will have a clear and transparent status, will be capable to independently obtain rights and obligations (powers) and bear responsibility for their implementation before the population. This is substantiated by the analyzed European experience of effective functioning of municipalities, which should be adopted in the future reform of local self-government in Ukraine.

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