

Constitutional and Legal Framework for the Capacity of Local Self-Government in Ukraine in the Context of European Integration: the Experience of the Baltic States

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Abstract

The article is devoted to a topical issue in the context of Ukraine's European integration, namely the modernization of legislative regulation of mechanisms for ensuring the capacity of local self-government. The relevance of the study is determined by the need to take into account European experience, in particular that of the Baltic states, where the concept of "capacity" is widely used in legal systems as a tool for enhancing efficiency and ensuring the proper functioning of local self-government. This approach is based on the full implementation of the provisions of the European Charter of Local Self-Government, which establishes relevant standards. The article analyzes the doctrinal understanding of the essence of the concept of "capacity" and distinguishes it from related categories, in particular "actual ability". The current state of legal regulation of this concept in Ukraine and the specifics of its enshrinement in normative legal acts are examined. Considerable attention is paid to the analysis of the practices of the Baltic states as an example of effective ensuring the capacity of local self-government. The author proposes a definition of capacity as a socio-legal category that reflects the potential ability of municipal institutions and the system of local self-government as a whole to effectively exercise their powers, provided that the necessary resources and internal potential are available. Based on this approach, proposals for amendments to the Constitution of Ukraine are substantiated, aimed at strengthening the institutional, functional, and financial capacity of local self-government. It is determined that such changes should be based on the provisions of the European Charter of Local Self-Government and the best practices of the Baltic states.

Key words: *capacity; local self-government; subsidiarity principle; financial autonomy; European integration.*

Конституційно-правове забезпечення спроможності місцевого самоврядування в Україні в умовах євроінтеграції: досвід країн Балтії

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Анотація

Статтю присвячено актуальній в умовах європейської інтеграції України проблемі модернізації законодавчого регулювання механізмів забезпечення спроможності місцевого самоврядування. Актуальність дослідження зумовлена необхідністю врахування європейського досвіду, зокрема балтійських країн, у правових системах яких категорія «спроможність» широко використовується як інструмент підвищення ефективності та гарантування функціонування місцевого самоврядування. Зазначений підхід ґрунтується на повноцінній імплементації положень Європейської хартії місцевого самоврядування, яка закріплює відповідні стандарти. У статті проаналізовано доктринальне розуміння сутності поняття «спроможність» та здійснено його розмежування із суміжними категоріями, зокрема «реальною здатністю». Досліджено сучасний стан правової регламентації цієї категорії в Україні та особливості її закріплення в нормативно-правових актах. Значну увагу приділено аналізу практики балтійських країн як прикладу ефективного забезпечення спроможності місцевого самоврядування. Запропоновано авторське визначення спроможності як соціально-правової категорії, що відображає потенційну здатність муніципальних інституцій та системи місцевого самоврядування загалом ефективно здійснювати свої повноваження за умови наявності необхідних ресурсів і внутрішнього потенціалу. На основі сформульованого підходу обґрунтовано пропозиції щодо внесення змін до Конституції України, спрямовані на посилення інституційної, функціональної та матеріально-фінансової спроможності місцевого самоврядування. Визначено, що такі зміни мають ґрунтуватися на положеннях Європейської хартії місцевого самоврядування та кращих практиках балтійських країн.

Ключові слова: спроможність; місцеве самоврядування; принцип субсидіарності; фінансова автономія; євроінтеграція.

Introduction

Ensuring the capacity of local self-government is one of the central tasks of constitutional reform in Ukraine under the conditions of European integration. Notwithstanding the substantial progress achieved in the sphere of decentralization over the past decade, the constitutional and legal regulation of local self-government in Ukraine remains insufficiently aligned with the standards of the European Charter of Local Self-Government of 1985 (ECLSG) [1]. In particular, the concept of "capacity" as an independent legal category has yet to receive adequate constitutional entrenchment, which adversely affects the institutional, functional, and financial autonomy of local self-government bodies.

It is for this reason that the purpose of the present paper is to investigate the essence of local self-government capacity and to propose directions for constitutional amendments that would enhance its institutional, material-financial, and other dimensions, taking into account the constitutional and legal experience of Estonia, Latvia, and Lithuania – states that have undergone a transition from the Soviet model of local authority organization to a democratic system of local self-government similar to that of Ukraine – with respect to the entrenchment of the right and capacity of local self-government bodies as independent categories, the implementation of the principle of subsidiarity, and the securing of financial autonomy for local self-government bodies.

Literature review

The relevant experience of the Baltic states in constitutional and legal provisions for local self-government has been examined predominantly within the frameworks of comparative municipal law and European integration studies. Among Estonian scholars, particular attention should be paid to the papers of Viktor Trasberg [2] and Georg Sootla [3], who analyze the constitutional guarantees of financial autonomy for Estonian municipalities and the Supreme Court's (Riigikohus) practice in protecting the rights of local self-government. The demarcation between the own and delegated functions of local self-government bodies in Estonia is examined in detail by Sulev Laane, Sulev Mäeltsemees, and Vallo Olle [4; 5]. In Latvian legal doctrine, the issues of local self-government capacity are addressed by Edvīns Vanags [6], Inga Vilka [7], and Gundar J. King [8], including the Constitutional Court of Latvia's practice, with these scholars investigating the legal mechanisms for securing the independence of local self-government. In Lithuanian scholarship, the institutional capacity of

local self-government bodies under the conditions of European integration has been studied by Violeta Kiurienė [9] and Diana Šaparnienė and Aistė Lazauskienė [10], while the general theoretical foundations of the local self-government systems of the Baltic states and their comparative analysis have been examined by Daunis Auers [11].

In domestic scholarship, a comparative analysis of the Baltic models of local self-government in the context of reforming the Ukrainian system of local self-government has been conducted by O.O. Petryshyn [12], T.V. Lushahina and D. Yang [13], O.M. Antoniuk [14], Yu.R. Masyk and O. Chernenchenko [15], A. Murtishcheva [16], M. Biliak [17], and other scholars [18; 19]. Nevertheless, the question of the constitutional entrenchment of local self-government capacity in the Baltic states, as well as the prospects for its implementation in Ukraine, remains insufficiently studied, necessitating their examination in the present article.

Materials and Methods

The methodology of the paper involves the extensive application of general philosophical, general scientific, and specialized methods. The systemic method and the method of logical analysis were employed to elaborate and formulate concepts. Prognostic, systemic-structural, and comparative methods were applied to formulate proposals for amendments to Ukraine's legislation. Extensive use was made of the techniques of analysis, synthesis, and classification, which enabled the examination of "capacity" as a systemic category, the identification of its varieties, and the proposal of their definitions. The techniques of modeling and comparative analysis were employed to perceive and incorporate foreign experience.

The comparative study of the experience of the Baltic states – Estonia, Latvia, and Lithuania – is methodologically justified in light of several key factors: these states belong to the post-socialist legal space, have been full members of the European Union since 2004, and have comprehensively implemented the standards of the European Charter of Local Self-Government of 1985, which allows their experience to be regarded as a practical embodiment of the very international legal standards that Ukraine is seeking to attain under its European integration course. The Baltic states carried out constitutional and legal reforms of local self-government within a compressed timeframe – between 1991 and 1994 – and have accumulated over thirty years of experience in the functioning of reformed local self-government institutions, thereby enabling an assessment not only of the normative consolidation but also of the practical effectiveness of the relevant constitutional solutions. The constitutional systems of Estonia, Latvia, and Lithuania incorporate distinct models of

constitutional provision for local self-government capacity – ranging from a maximally detailed entrenchment of financial guarantees, as in Estonia, to a systemic framework approach, as in Lithuania – thus providing grounds for identifying alternative constitutional solutions that may be suitable in the context of the modernization of local self-government in Ukraine.

Results and Discussion

The Essence and Substance of Capacity

The capacity of local self-government represents a relatively novel legal category in domestic legislation. This category has constitutional roots; however, the Basic Law of Ukraine employs it exclusively in relation to the President of Ukraine (Articles 108 and 110) and judges (Articles 126 and 149¹) to denote instances of incapacity to exercise their respective powers. Two conclusions may be drawn from this approach: first, the Constitution employs the term "incapacity", which is the antithesis of capacity, the latter having received no constitutional entrenchment; and second, incapacity in the context of constitutional regulation is used in an inseparable connection with powers, which indicates a close interrelationship between the two. At the same time, the Constitution does not employ this category in relation to the system of local self-government. Pursuant to Art. 140 (1) of the Constitution of Ukraine [20], local self-government is recognized solely as a right of the territorial community, with no indication that alongside this right, there must also exist a corresponding capacity.

Notably, Art. 2 of the Law of Ukraine "On Local Self-Government in Ukraine" defines local self-government as "the guaranteed by the state right and real ability of the territorial community", a formulation that invites inquiry into whether "real ability" and "capacity" are identical concepts [21].

It is noteworthy that the legislation of the Baltic states – members of the European Union – resolves this question more definitively. The Estonian Local Government Organization Act of 1993 (Kohaliku omavalitsuse korralduse seadus), in para 2, defines local self-government as the right, capacity, and obligation (õigus, võime ja kohustus) of the democratically formed authorities of a local government unit – a rural municipality or a city – to independently organize and manage local life based on laws, proceeding from the legitimate needs and interests of the residents of the rural municipality or city and taking into account the particularities of their development, as provided for by the Constitution [22]. Thus, the concepts of "right" and "capacity" are employed as non-equivalent yet parallel components of the legal status of local self-government bodies, directly reflecting Art. 3 of the ECLSG [1]. The Latvian Law on Local Governments of 2022 (Pašvaldību likums), in Art. 1, defines local self-government as

a derivative public entity possessing a decision-making body – a council – elected by the population, which independently ensures the performance of the functions and tasks established by legal acts in the interests of the population of its administrative territory and bears responsibility therefor [23]. The Lithuanian legislation – the Law on Local Self-Government of 1994 (Vietos savivaldos įstatymas, No. I-533, as subsequently amended) – in Art. 1 distinguishes between the right and real powers (teisė ir reali galia) of local self-government bodies, elected by the residents of an administrative unit, to freely and independently regulate and manage public affairs and to satisfy the needs of residents on their own responsibility [24].

Accordingly, within the legal orders of the Baltic states, "right" and "capacity (ability)" are regarded as distinct categories which, taken together, constitute genuine self-government – in contrast to Ukrainian legislation, where "real ability" is effectively equated with "capacity", without acquiring a clear and independent legal significance.

Examining the etymological essence of these concepts, O.O. Surkov notes that capacity denotes a potential possibility, the existence of conditions, resources, or a right (standard) that permit the accomplishment of a given task, whereas real ability refers to the actual performance of that task – the practical application of available possibilities under specific circumstances. The distinction lies in the transition from "I can" (theoretically or in terms of resources) to "I do" (in fact) [25].

Accordingly, capacity (capability) connotes the possession of resources, knowledge, instruments, and conditions for performing a task, while real ability denotes the skill to apply those resources here and now to achieve a concrete result.

O.H. Ros defines institutional capacity as the ability of an institution to perform its functions through the provision of an adequate level of professional training of personnel, as well as through appropriate processes, organizational structures, and resources of the institution concerned [26].

In the view of O.V. Bashtannyk, institutional capacity may be defined as the ability to regulate a particular type of socio-political relations within a political system, or the system as a whole in the case of the institution of the state, based on normative and value-based foundations – including the observance of human rights and freedoms and the reform of the governance system in accordance with European standards. Institutional capacity may further be characterized as the ability of a given structure to perform the functions assigned to it, which may constitute a set of tasks identified for the most comprehensive possible fulfillment of the organization's functions – drawing upon the necessary resource support [27].

A substantive analysis of the evolution of the concept of institutional capacity is also conducted by T. Zakharov [28] and I.Yu. Marko [29].

At the same time, in examining the doctrinal positions of scholars, attention should be drawn to the typological diversity of the internal content of capacity, according to which it encompasses not only the institutional dimension but also organizational, legal, human resources, material-financial, and other dimensions. This aspect significantly influences the definitions advanced by researchers.

In particular, a complex mechanism for determining the financial capacity of territorial communities is proposed by Ya.M. Kaziuk and V.T. Ventsel, who indicate that the most effective approach for this purpose is one developed based on calculating eleven proposed indicators and distributing territorial communities of Ukraine into quartiles in accordance with the computed values of those indicators, followed by the determination of the level of community capacity [30].

Taking into account the defining characteristics of the various types of capacity identified by researchers in their formulations, it is possible to advance an original understanding of the concept. In the authors' view, "capacity" is a more ideal category in comparison with real ability, and therefore constitutes a potential ability, presupposing the existence within the relevant institution or institutional system – such as local self-government – of a comprehensive set of diverse resources and internal potential that enable it to function at the highest possible level of quality and efficiency while expending the minimum amount of resources in the exercise of the greatest number of powers and the provision of services.

Beyond doctrinal approaches to defining and understanding the content of the concept of "capacity", its legal definition is of considerable importance.

While doctrinal frameworks offer valuable insight into the concept of 'capacity,' its precise legal definition carries significant weight in practice.

The concept of capacity in relation to the system of local self-government was first mentioned in the Law "On the Voluntary Amalgamation of Territorial Communities", although no definition was provided therein [31].

Subsequently, the concept of capacity as applied to the territorial community was embodied in the provisions of the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Methodology for the Formation of Capable Territorial Communities" [32]. This act contains a definition of the concept of a "project-capable territorial community", subsequently referred to simply as a "capable territorial community". It is understood as the territorial communities of villages, settlements, and cities which,

as a result of voluntary amalgamation – or voluntary accession to an amalgamated territorial community – are able, independently or through the relevant local self-government bodies, to ensure an adequate level of public service provision, in particular in the fields of education, culture, healthcare, social protection, and housing and communal services, taking into account the human resources, financial provision, and infrastructure development of the relevant administrative-territorial unit. In this definition, capacity is defined by reference to ability, which indicates that the legislator has, in effect, equated these two categories.

The concept of capacity is also formulated in state sanitary norms and rules, where it is defined as a characteristic presupposing the existence of material, financial, and other resources in volumes sufficient for the effective performance of the tasks and functions of a healthcare institution in the provision of medical services at the level prescribed by the requirements of legislation [33].

It is noteworthy in this regard that capacity is defined not as a natural condition of a particular territorial community or local self-government system of a given territory, but rather as an artificial or conferred – that is, assigned – condition granted by the state. In other words, such a condition is bestowed by a decision of the Cabinet of Ministers of Ukraine. Illustrative in this respect is the provision of the Law of Ukraine "On the Voluntary Amalgamation of Territorial Communities", which stipulates that where the council of an amalgamated territorial community has adopted a decision refusing consent to the voluntary accession of another territorial community at the latter's initiative, the Cabinet of Ministers of Ukraine may annul the decision recognizing such an amalgamated territorial community as capable [31]. As is evident, this is enshrined as a right rather than an obligation of the Cabinet of Ministers of Ukraine to annul the relevant decision, meaning that it is precisely this body that acts as the institution determining the presence or absence of the capacity of a territorial community.

In Estonia, pursuant to para 2 of the Local Government Organization Act of 1993, the "right, capacity, and obligation" of local self-government bodies to independently organize and manage local life constitute three distinct categories: õigus (right), võime (capacity), and kohustus (obligation) [22]. A similar approach is found in Art. 2 of the Law on Local Self-Government of the Republic of Lithuania of 1994 [24], which refers to the right and real powers (teisė ir reali galia) of local self-government bodies.

The distinction between the concepts of "ability" and "capacity" in Latvian legislation is less explicit – for instance, in the Law on Local Governments [22] – given that the direct applicability of the ECLSG as a constitutional

standard is enshrined therein: the Charter constitutes the supreme law in the field of local governance. Its direct applicability has been recognized by the Constitutional Court of Latvia: the twenty-nine articles of the Charter ratified by parliament carry the same force as the principle of a democratic state enshrined in Art. 1 of the Constitution of Latvia. Upon ratifying the ECLSG on 22 February 1996, the ratification law stated that the Republic of Latvia undertakes to consider the articles and paragraphs of Part I of the Charter as binding upon itself. Accordingly, the concept of "capacity" in Latvian local self-government law is grounded in the direct application of Art. 3 of the ECLSG – as a constitutional standard rather than a discrete legislative provision. The most detailed and precise legislative parallel to Art. 3 of the ECLSG is thus demonstrated by Estonia.

The issue of ensuring local self-government capacity in Ukraine has, in the authors' view, rather deep roots and requires an analysis of the problem of implementing the provisions of the European Charter of Local Self-Government. It is precisely Art. 3(1) of the Charter that defines local self-government as the right and ability of local self-government bodies to regulate and manage, within the limits of the law, a substantial share of public affairs under their own responsibility and in the interests of the local population.

However, ensuring local self-government capacity in Ukraine requires not only implementing the provisions of Art. 3(1) of the ECLSG [1], but also taking into account the other standards contained in that instrument.

In this context, it should be emphasized that the Baltic states ratified the ECLSG without substantive reservations: Lithuania on 22 June 1999 (entering into force on 1 October 1999), Estonia on 28 September 1994 (entering into force on 1 February 1995), and Latvia on 27 April 1996 (entering into force on 1 August 1996). All three states ratified all the Charter's mandatory articles in full. Of fundamental importance is also the fact that within the legal systems of Estonia and Latvia, the ratified provisions of the ECLSG acquire direct effect as norms taking priority over conflicting acts of national legislation – pursuant to para 123 of the Constitution of Estonia [34] and as follows from the content of Art. 68 of the Constitution of Latvia [35], both of which enshrine the supremacy of ratified international treaties over domestic laws. In Lithuania, pursuant to Art. 138 of the Constitution, ratified treaties form an integral part of the national legal system [36]. This means that the provisions of Art. 3(1) of the ECLSG constitute a directly applicable constitutional standard in the Baltic states, rather than merely a guiding principle for the legislator – a circumstance that ensures a higher level of institutional capacity of their local self-government bodies.

The scope and level of capacity and their importance for the effective exercise of powers by local self-government entities

Ukrainian legislation contains criteria for assessing the capacity of territorial communities, as well as requirements intended to lead to the formation of capable territorial communities. All of these are set out in the aforementioned governmental resolution. Accordingly, the formation of capable territorial communities is carried out with regard to: (1) the ability of local self-government bodies to resolve public matters falling within their competence in order to meet the needs of the population of the relevant administrative-territorial units; (2) the historical, geographical, socio-economic, natural, ecological, ethnic, and cultural particularities of the development of the relevant administrative-territorial units; (3) the infrastructure development of the relevant administrative-territorial units; (4) the financial provision of the relevant administrative-territorial units; (5) labour migration of the population; (6) the results of the prior assessment of the level of capacity of capable territorial communities; and (7) the optimal networks of social infrastructure and the accessibility of public services in the relevant sectors.

The criteria for assessing the level of capacity, pursuant to the said regulatory act, are as follows: (1) the number of persons permanently residing on the territory of a capable territorial community; (2) the number of pupils receiving education in general secondary education institutions located on the territory of a capable territorial community; (3) the area of the territory of a capable territorial community; (4) the tax capacity index of the budget of a capable territorial community; and (5) the share of local taxes and levies in the revenues of the budget of a capable territorial community.

At the constitutional level in Ukraine, the territorial community is recognized as the primary subject of local self-government. At the same time, the elaboration of constitutional provisions at the legislative level demonstrates that powers in the sphere of local self-government are exercised predominantly by its bodies (Chapter 2 of the Law of Ukraine "On Local Self-Government in Ukraine" [21]).

The current political and legal situation in Ukraine reveals a certain idealistic character of the territorial community, whereby it constitutes the foundation of the local self-government system only in a formal sense – ensuring the formation of local self-government bodies and, in certain cases, exercising oversight over them. The forms of direct resolution of matters of local significance by the territorial community itself, as provided for by legislation, are either difficult to implement in practice or purely declaratory,

lacking any mechanism for their implementation. Consequently, in the Law of Ukraine "On Local Self-Government in Ukraine", a rather limited number of provisions are directly devoted to the territorial community – notably Art. 6. even though the territorial community embodies the principle of popular sovereignty and democracy at the local level, real power is concentrated in the hands of deputies and officials of local self-government bodies [21].

In this connection, it is possible to propose, at the constitutional level, a direction for reform that would, in effect, retain the territorial community as the primary subject, fully corresponding to the proposed concept of municipal dualism and enabling the realization of the provisions of the European Charter. At the same time, the primary advantage of local governance should be constitutionally vested in local self-government bodies, which should be designated as the principal subjects thereof.

Furthermore, the right of local self-government bodies, as enshrined in Art. 3(1) of the Charter, to resolve public affairs within the limits of legislation, fully corresponds to the provisions of Art. 19(2) of the Constitution of Ukraine [20], which enshrines the principle of legality in the operation of public authority bodies and extends it to the sphere of local self-government.

Instructive in this regard is the experience of the Baltic states with respect to the implementation of the principle of general residual competence of local self-government bodies – the so-called principle of "negative regulation". Thus, para 6(1) of the Estonian Local Government Organization Act of 1993 stipulates that local authorities are entitled to resolve and organize all matters of local significance unless these have been assigned by law to another body. Analogously, Art. 5(1) of the Latvian Law on Local Governments of 1994 provides for an open-ended list of local government functions accompanied by a general residual clause – whereby a local government may voluntarily implement initiatives in the interests of the residents of its administrative territory on any matter, provided that such matters do not fall within the competence of other institutions and that such activities are not restricted by other laws [23]. In Lithuania, Art. 14 of the Law on Local Self-Government of 1994 clearly distinguishes between autonomous functions (*savarankiškosios funkcijos*) and state-delegated functions (*valstybinės funkcijos*), expressly stipulating that the former are exercised by local self-government bodies without a separate legislative authorization [24]. Accordingly, in all three Baltic states, Art. 4(2) of the ECLSG [1] has been implemented at the legislative level: local self-government bodies have the full right to address any matter not excluded from their competence or assigned to another body. This fundamentally distinguishes them from Ukraine, where positive – that is, permissive – regulation is maintained: local self-government bodies are entitled to act

only within the bounds of powers expressly defined by law, pursuant to Art. 19(2) of the Constitution of Ukraine [20].

The role of the ECLSG in determining the directions of modernization of the constitutional regulation of the capacity of local self-government

Of considerable importance is the constitutional entrenchment of the principle of the capacity of local self-government bodies to exercise the relevant powers. Such capacity is invariably addressed to local self-government bodies rather than to the territorial community, thereby underscoring their status as the primary subjects. It is precisely local self-government bodies that would become the principal mechanism for the exercise of municipal authority and the executor of the community's will.

In this regard, it should be noted that the legal personality of local self-government bodies must be materially secured – meaning that it is necessary to constitutionally vest in those bodies the powers to exercise the rights of a subject of communal property. This would serve as a guarantee of the capacity of local self-government bodies to administer public affairs.

The Constitution is an instrument that concentratedly reflects the fundamental principles of the functioning of local self-government. Therefore, the detailed entrenchment of the entire local self-government system at this level is neither obligatory nor consistent with the requirements of constitutional legal technique. This does not impede the realization of the provisions of the European Charter and would promote the organizational independence of local self-government bodies.

At the same time, it is, in the authors' view, appropriate to enshrine at the constitutional level the principle that the executive bodies of local councils are accountable and answerable to those councils in the course of their activities. Answerability denotes a particular form of dependence of a body whereby its activities are subject to review by another body authorized to exercise oversight. The body subject to oversight is obliged both to afford the necessary conditions for such reviews and to report on its activities. Answerability is substantively broader than accountability, since it may entail the supervisory body's receipt of all necessary information, including reports, whereas accountability may also operate independently – that is, separately from the exercise of the oversight function.

It is further important that the constitutional norms expressly provide for representative bodies of local self-government at the district and regional levels to possess dedicated executive organs, in full conformity with the corresponding principle enshrined in the Charter.

Of significant importance for ensuring the capacity of territorial communities is the implementation of the ECLSG provision according to which local self-government bodies shall, within the limits of the law, have full discretion to exercise their initiative concerning any matter which is not excluded from their competence nor assigned to any other authority. To implement the said principle of the European Charter at the constitutional level, it is first necessary to reconsider the foundations of the national legal system and the principle of legality in the state, pursuant to which local self-government bodies are subject to the principle of "positive legal regulation" of their activities.

It should be noted that the European Charter seeks, within the framework of its provisions, to reconcile the principles of both positive and negative legal regulation. In particular, in defining the concept of local self-government in Art. 3(1), the Charter emphasizes the exercise and management of local affairs within the limits of the law, whereas Art. 4(2) takes a contrary position.

In the authors' view, the combination of the relevant principles in the Charter has been made to accommodate the specificities of the legal systems of the various states acceding to the Charter, each of which may determine for itself the principle of legal regulation most characteristic of the development of its local self-government system.

Furthermore, to ensure the sustainable development of local self-government and its capacity at the constitutional level, it is necessary to take into account the principle of subsidiarity, alongside the exercise of delegated powers and the further decentralization of state authority. Accordingly, with respect to the exercise of powers that reflect matters of local significance and are vested in local self-government bodies as their own, such bodies act in accordance with the principle of subsidiarity, whilst with respect to the exercise of delegated powers, they act in accordance with the principle of decentralization.

The experience of the Baltic states demonstrates that the principle of subsidiarity can be effectively entrenched at both the constitutional and legislative levels. In Estonia, para 154 of the Constitution expressly establishes that local matters are resolved and administered by local bodies independently, thereby embodying the principle of subsidiarity [34]. In Lithuania, the principle of subsidiarity is enshrined in Art. 14 of the Law on Local Self-Government [24], which provides that local self-government bodies, in accordance with the autonomous competence conferred upon them by that Law, enjoy freedom of action, initiative, and decision-making within the limits permitted by the Constitution of the

Republic of Lithuania, laws, and subordinate legislation; whilst Art. 120 of the Constitution stipulates that municipalities act freely and independently within the competence defined by the Constitution and laws. In Latvia, Art. 4(3) of the ECLSG is applied directly as a norm of immediate effect, and Art. 2 of the Law on Local Governments enshrines the principle that local governments independently ensure the performance of the functions and tasks established by legal acts [23]. Of fundamental importance is also the fact that in the Baltic states a clear mechanism for distinguishing between own and delegated functions has been established at the constitutional or legislative level: in Lithuania, for instance, Articles 15 and 16 of the Law on Local Self-Government contain exhaustive lists [24], whilst in Estonia Art. 154 of the Constitution distinguishes between autonomous and delegated functions – thereby precluding the imposition upon local self-government bodies of state tasks without corresponding financial provision [34].

Furthermore, at the legislative level, it is necessary to revisit the powers of state executive authority bodies that have been delegated to local self-government bodies and to recognize these as "own" powers, given that they are in practice exercised by local self-government on a permanent basis. In this regard, it is also appropriate to consider introducing new forms of delegation of powers.

It is likewise necessary to enshrine at the constitutional level the principle of the fullness of powers of local self-government bodies. Fullness of powers denotes their sufficiency for the effective exercise of all functions assigned to local self-government bodies. Such powers may not be transferred for exercise to any other body and must fall within the sphere of competence of local self-government bodies.

The entrenchment of this principle would constitute an important step towards delineating powers between local self-government bodies and state authority bodies, as well as towards enhancing the institutional capacity of local self-government to resolve matters of local significance. Furthermore, the implementation of this principle at the constitutional level would create additional conditions for the establishment, at the district and regional levels of territorial governance, of executive bodies of local councils – both district and regional – and would promote a transformation of the status of local state administrations in the direction of their exercise exclusively of certain supervisory functions over the legality of local self-government acts.

Of considerable importance is the provision for the executive bodies of local councils to have delegated powers adapted to local conditions. This may be achieved through their elaboration in the statutes of territorial

communities, which may provide for the particularities of the structural organization of local self-government executive bodies.

Art. 143(3) of the Constitution [20] stipulates that the state finances the exercise of these powers in full from the funds of the State Budget of Ukraine, or by attributing, in the manner established by law, certain national taxes to the local budget, and transfers to local self-government bodies the relevant objects of state property.

In the comparative context, it is of fundamental importance that in the Baltic states, the prohibition of unfunded mandates is enshrined with considerable rigour. In Estonia, para 154(2) of the Constitution [34] expressly establishes that obligations imposed upon local self-government bodies must be provided for by law and that the costs of their performance are financed from the state budget – constituting a direct constitutional prohibition of unfunded mandates that is absent from the Constitution of Ukraine [20]. In Latvia, Art. 6 of the Law obliges the state to ensure the full financing of delegated functions, with the state bearing responsibility for the lawful and effective performance of the delegated administrative task [23]. In Lithuania, Art. 9 of the Law on Local Self-Government stipulates that the state is obliged to provide local self-government bodies with the financial resources necessary for the performance of delegated state functions, with funds for their performance allocated from the state budget of Lithuania; whilst Art. 16 provides that in the performance of delegated state functions, local self-government bodies are guided by laws and implement resolutions of the Government [24]. The foregoing provisions demonstrate a robust system of financial guarantees for the state's delegated powers, as well as mechanisms for judicial protection of this right.

Moreover, the resolution of this issue lies in legislative revision of the sectoral delegated powers conferred upon executive bodies of local self-government, whereby the overwhelming majority of such powers would be reconstituted as own competencies.

The possibility of adapting the activities of executive bodies of local self-government with respect to the exercise of delegated powers to local conditions may, at the constitutional level, be secured by imposing upon local councils an obligation to adopt statutes of territorial communities.

As regards the delegation of powers, this system requires rationalization and must, at the constitutional level, be brought into conformity with the provisions of the European Charter.

The improvement of constitutional provisions and the implementation of the aforementioned ECLSG [1] standards will serve as a guarantee for the effective realization of European integration processes.

Conclusions

The concept of "capacity" of local self-government constitutes an independent legal category that cannot be equated with "real ability" as employed in current Ukrainian legislation. Capacity is an ideal socio-legal category that reflects a municipal institution's potential to function at the highest possible level of quality and efficiency, provided that the relevant resources, powers, and internal capacity are in place. Real ability, by contrast, is the actual realization of that potential under specific conditions. A clear delineation between these concepts constitutes an indispensable precondition for the proper and coherent legal regulation of the local self-government system.

The Constitution of Ukraine does not enshrine the concept of capacity within the local self-government system, thereby constituting a significant lacuna in the Basic Law. The use of the term "incapacity" exclusively with reference to the President of Ukraine and judges, combined with the definition of local self-government solely as a "right" of the territorial community without any reference to capacity as a parallel category, indicates that the constitutional regulation does not conform to the standards of the ECLSG. Addressing this lacuna is the primary task of constitutional reform in the sphere of local self-government.

The experience of the Baltic states convincingly demonstrates that the effective provision of local self-government capacity is possible only where it is constitutionally or legislatively entrenched as an independent category alongside the right to self-government. Illustrative in this regard is the approach of the Estonian legislator, who enshrined the triad of rights, capacities, and obligations of local self-government bodies as equivalent yet substantively distinct components of their legal status. This approach most precisely corresponds to the provisions of Art. 3(1) of the ECLSG [1] and may serve as a model for Ukrainian constitutional reform.

The principle of subsidiarity, enshrined in Art. 4(3, 4) of the ECLSG [1] has been implemented in the Baltic states at both the constitutional and legislative levels, ensuring an organic combination of decentralization and effective local governance. Ukraine must enshrine this principle directly in the Constitution, providing that matters of local significance are resolved by local self-government bodies independently, without interference from state authority bodies, unless otherwise expressly provided by law.

The principle of general residual competence of local self-government bodies – the principle of "negative regulation" – is enshrined in Art. 4(2) of the ECLSG [1] remains unimplemented in Ukraine. The current constitutional model, grounded in the principle of "positive regulation"

pursuant to Art. 19(2) of the Constitution of Ukraine [20], substantially restricts the initiative of local self-government bodies and narrows their functional capacity. The transition to the principle of negative regulation – whereby local self-government bodies are entitled to resolve any matter not expressly excluded from their competence – is a necessary step towards genuine, rather than declaratory, self-government.

The constitutional entrenchment of the prohibition on unfunded mandates is one of the most important guarantees of local self-government's financial capacity. The experience of the Baltic states is unequivocal: in Estonia, para 154(2) of the Constitution expressly prohibits the imposition of obligations on local self-government bodies without corresponding financing from the state budget; analogous provisions are contained in the legislation of Latvia and Lithuania. The Constitution of Ukraine [20] contains no such direct prohibition, which, in practice, leads to the systematic transfer of state tasks to local self-government bodies without adequate resource provision. Addressing this lacuna by introducing the necessary amendments to the Constitution is urgent.

At the constitutional level, it is appropriate to enshrine the concept of municipal dualism, whereby the territorial community remains the primary subject of local self-government as the holder of the right to self-government, whilst local self-government bodies serve as the principal subjects of its practical realization. Such a model is consistent with both the provisions of the ECLSG and the principles of democratic governance, ensuring a balance between local-level popular sovereignty and the effectiveness of municipal administration.

In conclusion, it should be emphasized that enhancing local self-government capacity in Ukraine is a complex undertaking that requires a systemic approach encompassing the institutional, functional, and material-financial dimensions simultaneously. The implementation of the proposed constitutional amendments, in conjunction with the comprehensive incorporation of the ECLSG provisions and due regard for the experience of the Baltic states, will make it possible to establish a sound constitutional and legal foundation for effective local self-government in Ukraine and will bring its legal system closer to the standards of the European Union.

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