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MUNICIPALITY: CONSTITUTIONAL AND LEGAL ASPECTS

The article is devoted to the study of the legal status of municipal authorities in the system of constitutional and legal relations. The concept of power as a social phenomenon in the development of the state is argued, the significance of which is especially exacerbated during the period of socio-economic transformations, when economic regimes change and significant transformations occur in the functioning of the political system and the division of state power. The definition of municipal power is given as a special public-law phenomenon, which is implemented through the system of power relations, which are aimed at solving all issues of local-regional significance.

Key words: municipal power, public authority, democracy, local government, municipalities.

Formulation of the problem. One of the topical problems is local self-government as an extremely new system of organizing public power on the ground. This, first of all, determines the theoretical and social significance of this study, which is devoted to determining the place and role of municipal authorities in the system of constitutional and legal relations.

Analysis of recent research and publications. A study of the fundamental foundations of the functioning of municipal government is devoted to the works of many academic jurists: A. A. Akmalova, M. A. Baimuratov, A. V. Batanov, M. F. Orzikh, N. L. Peshin, N. V. Postovoy, V. E. Chirkin.

Objectives of the article. The purpose of this study is to determine the legal status of municipal authorities in a system of public power relations within which the functions and powers of local self-government are realized.

Statement of the main material. The revival of the institution of local self-government in Ukraine requires targeted actions to provide organizational and legal and economic support for decentralization in the sphere of administration, the embodiment of an optimal model for the distribution of functional and economic powers between central and local authorities, improvement of organizational activities, legal and economic bases for the functioning of local self-government bodies [1].

Power as a social phenomenon has always attracted and draws the attention of scholars and researchers of various branches of social and human sciences. This is especially manifested in the critical epochs of social and economic development, when economic regimes change and significant changes occur in the functioning of the political system and the division of state power.

The establishment of a sovereign, independent, democratic, social and legal state in Ukraine (Article 1 of the Constitution of Ukraine) not only objectively actualized the recognition, but also served as the normative base for the scientific and pragmatic legalization of public power (Article 5 of the Constitution of Ukraine). The constitutional position that «the people is the bearer of sovereignty and the only source of power in Ukraine» and that «the people exercise power directly and through state authorities and local self-government bodies» has become the normative and methodological basis for the constitution and legal identification of public power and its differentiation on direct democracy, state and municipal power [2].

Municipal power is a special kind of power; it is not literally a continuation of state power on the ground, although it has a number of features that are inherent in state power. These include: the presence of an apparatus that exercises power functions, the availability of a regulatory framework for activities, the possibility of using the state machinery of coercion, the economic basis, including the receipt of local taxes and fees, the existence of a centralized fund of financial resources in the form of local budgets.

At the same time, the municipal government has a number of features that distinguish it from state power. Among them there is a lack of strict hierarchy and subordination of local self-government bodies, non-state essence of local self-government bodies (therefore they act not on behalf of the state, but on their own behalf), a special range of issues related to their jurisdiction, local issues.

Municipal government is a special public and legal phenomenon and differs from state power in that it has qualitatively separated its features.

Firstly, the presence of a special subject: the population of the municipal formation. Its peculiarity is connected with the fact that in the person of this population there is a coincidence of the object and the subject of municipal legal regulation. This provision was first formulated by the scientist Volkov Y.E. in 1965 [3], while for public administration there is a discrepancy, and sometimes even a contrast, between the subject and the control object. In addition, at the local level, the subject of management is not state bodies or officials appointed from above, but elected representatives of local communities [4].

Secondly, the qualitative difference is that the apparatus that implements the municipal power authority is separate and in its activity relies on legislation on local self-government. The difference is that local self-government does not have its own enforcement apparatus, which in exceptional cases is borrowed to the state.

It should be noted that this position is not shared by all legal scholars. Thus, Postovoi, a scientist, insists that local self-government bodies «are in the broadest sense a continuation of state government on the ground, since public powers are inherent in both state authorities and local self-government bodies». In addition, as the Russian scientist Postov N. bats «the statehood of local self-government, according to Art. 9 of the European Charter of Local Self-Government is manifested in the fact that the state regulates the distribution of financial resources between local governments, granting them subsidies for the financing of certain projects, etc. Provided that the state exists in society, local self-government becomes dependent on the state. Life itself confirms this conclusion. The state adopts a real law on the establishment of local self-government, it is, does not accept - self-government cannot be.

This is especially characteristic of the modern period of Russia, when people are used to the organizing role of the state, to the team from above «[5].

It is hardly possible to agree with such a position of the esteemed scientist. After all, any state powers are of a public nature, but not every public interest necessarily has state significance. As the scientist-researcher Akmalova A.A. correctly notes, «in the context of the significant influence of the state on all socio-political processes, the fate of local self-government depended on the chosen political elite of the course each time» [6].

Local self-government, as a social system, is an aggregate of social relations that arise, change, stop on the territory of municipal entities as a result of joint activity of subjects of local self-government [7]. The meaning of local self-government lies in a special way of decentralizing government in the state. Hence the status of the relevant bodies, as authorities. But this is a public authority, whose decisions are subject to the population of the relevant municipalities [8].

From this it follows that the municipal power is a kind of both social and public power operating within the municipality. Municipal authority can be defined as a form of social relations in which, according to the norms regulating the status of the local community, the activities of some entities direct, change, or stabilize the activities of other actors in accordance with their interests, goals and within the framework of national policy [9].

Domestic scientist-constitutionalist Orzikh M. F. believes that it is the synthesis of the public and state theory of self-government that gives the constitutional opportunity to «enter the legal gates» and not «destroy the municipal fences» that were unsuccessfully built on the ground under the influence of «revolutionary psychology and sovereign outrage local councils» [10].

The same point of view is shared by the Russian scientist-researcher Peshin N. L, who believes that the problem of the nature of municipal power must be solved from the point of view of combining in nature the self-government of «public» and «state» principles. If local self-government is completely separated from the solution of state tasks, it will become completely public, but the state will have to create a territorially «duplicating» system of its power to solve state issues at the local level, which is economically inefficient. If self-government is completely subordinated to state power, then in the end we can get not local self-government in its constitutional understanding (as a form of democracy providing independent activity of the population to address issues of local importance), but the local level of government, which will certainly be effective in the solution of tasks set by the state, but at the same time, the interests of the inhabitants of individual territories will not be of much interest, which will itself level the meaning of local self-government [11].

In this regard, the position of the scientist Chirkin V.E., that «the task of strengthening the state power cannot be solved without strengthening local government, but not on the basis of its further isolation, but on the basis of increasing reasonable centralization, strengthening state began in the management of the field» [12].

Conclusions. Thus, «municipal power is a kind of not only social, but also public power, operates within the municipality, is implemented on behalf of the local community by local government and is based on the rules of law.

Municipal power can be defined as a form of social relations in which, according to the norms of the local community, the activities of certain actors, acting on the activities of other entities, change or stabilize it in accordance with their goals within the framework of a nation-wide policy «[13].

Formation and development of democracy in Ukraine, the formation of civil society are impossible without the institutions of local government and effective mechanisms of municipal democracy. Fundamental studies of municipal legal construction, the formation of the national municipal legal theory will play a fundamental role in the formation of municipal law as a branch of law and institutionalization of municipal power in Ukraine [14].

Based on the foregoing, we can draw a conclusion about the concept of municipal power. Municipal power is a special kind of power, a form of public authority that is implemented through a system of power relations aimed at the realization of the rights and freedoms of the population of municipalities, the solution of all issues of local and regional importance, the implementation and improvement of certain state powers that may be vested in local self-government bodies and ensuring the universality of their decisions through mutually beneficial partnership and mutual responsibility.

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МУНІЦИПАЛЬНА ВЛАДА: КОНСТИТУЦІЙНО-ПРАВОВІ АСПЕКТИ

Резюме

Стаття присвячена дослідженню правового статусу муніципальної влади в системі конституційно-правових відносин. Аргументується поняття влади як соціального феномена в розвитку держави, значення якого особливо загострюється в період соціально-економічних перетворень, коли змінюються економічні режими і відбуваються істотні трансформації у функціонуванні політичної системи і розподілі державної влади. Дається визначення муніципальної влади як особливого публічно-правового феномена, який реалізується за допомогою системи владних відносин, що спрямовані на вирішення всіх питань локально-регіонального значення.

Ключові слова: влада, муніципальна влада, публічна влада, демократія, муніципальні утворення.

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Резюме

Статья посвящена исследованию правового статуса муниципальной власти в системе конституционно-правовых отношений. Аргументируется понятие власти как социального феномена в развитии государства, значение которого особенно обостряется в период социально-экономических преобразований, когда меняются экономические режимы и происходят существенные трансформации в функционировании политической системы и разделении государственной власти. Дается определение муниципальной власти как особенного публично-правового феномена, который реализуется посредством системы властных отношений, направленных на решение всех вопросов локально-регионального значения.

Ключевые слова: власть, муниципальная власть, публичная власть, демократия, муниципальные образования.