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MODERN TRENDS IN THE FORMATION OF PUBLIC AUTHORITIES OF CITIES IN THE EUROPEAN UNION AND UKRAINE

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Abstract. The article is devoted to the study of modern trends in the formation of public authorities in the cities of the European Union and Ukraine, to the search for ways to choose the most optimal methods. The purpose of the study is to analyze the trends in the formation of public authorities in the cities of the European Union and Ukraine. The tasks that were set and solved are the analysis of the electoral systems used in the elections of local self-government bodies of the European Union countries, the characteristics of the system and the procedure for the formation of public authorities of cities in Ukraine, and the search for ways to improve the latter. It has been found that in the European Union countries there is mostly a tendency to choose a proportional electoral system and, accordingly, the participation of political parties in the implementation of local democracy. A similar trend is observed in Ukraine. The author defends the position that in the formation of representative bodies of the public authorities of cities, the most optimal is the application of the majority election system, which makes it possible to really implement the representation of the interests of the territorial community.

Key words: local public authorities, local self-government bodies, local state administrations, electoral system, methods of formation of public authorities of cities.

Introduction. We found out that the public authorities of cities are local self-government bodies and state authorities. The procedure for their formation is applied to representative bodies of local self-government – elections, to bodies of state power, the appointment procedure determined by legislation, mostly on civil service, and executive bodies of local self-government are formed by representative bodies of local self-government, on the basis and in the manner prescribed by law.

The issues of the procedure for the formation of city councils, district councils in the city and the election of the mayor are defined in Art. 192 of the Election Code of Ukraine (Election Code of Ukraine, 2019) according to which the choice of electoral system for electing city council deputies depends on the number of electors – members of the territorial community.

So, in relation to city councils, in cities with a larger population, a proportional electoral system is used, and in a smaller one, a majoritarian system. In turn, in relation to the mayor, in cities with a larger population, the majoritarian system of the absolute majority is used.

We defend the position that, regardless of the size of the population, a majoritarian electoral system should be used in local elections, since the activities of political parties are more focused on political struggle, and participation in local elections is regarded as an intermediate stage before parliamentary elections, at the same time, the interests of local importance, the needs of the territorial community are not properly realized.

The use of electoral systems in local elections. Regarding electoral systems, the following should be noted.

The electoral system is understood as the procedure for organizing and conducting elections to representative bodies of government and exercising citizens' electoral rights. Functionally and instrumentally, the electoral system is a component (element) of the political system that organizes and serves the institution of elections, established by law or another normative act in the way of determining

voting results and the order of distribution of mandates between parties and candidates. This set of legally established rules for the organization and conduct of elections, criteria and methods of determining their results: – establishes the principles on the basis of which elections are held, as well as the rights of citizens to elect and be elected; – regulates social relations that arise in the process of organizing and conducting elections to state authorities and local self-government; – establishes guarantees of citizens' electoral rights and the responsibility of deputies and other elected persons before voters. In a narrow sense, the electoral system is an electoral formula, a method of determining election results, a normative and regulatory level of the electoral system. In a broad sense, in addition to the mentioned factor, we should also talk about the institutional space in which the subjects of the election process (the state, political forces, the electorate) are located, as well as what serves as a kind of vestibular apparatus of the system – its information and communication structure (Mykhalchenko M., Samchuk Z. (2010): 268).

In a comparative study of the world experience of the Inter-Parliamentary Union, electoral systems are structured into the following groups: the first is the majority vote system, which consists of subgroups: a) simple majority; b) absolute majority; c) alternative or preferential voting. To the second group of electoral systems, the mentioned research refers to the system of proportional representation, which is divided into: a) full proportional representation; b) limited proportional representation. The third group is a mixed electoral system, which includes: a) a system of simple voting without the right to vote; b) system of limited voting; c) cumulative voting system; d) a system of simple voting with the right to vote. The specified version of the classification of electoral systems is characterized by the fact that it is based not on the method of distributing mandates, but on the voting system (Mykhalchenko M., Samchuk Z. (2010): 269).

Concerning to the formation of local public authorities in Poland, the majoritarian system of relative majority is preserved only in communes with a population of less than 20,000 people, and is used in the form of voting in a multi-mandate district for candidates included in open lists. In communities with a population of more than 20,000 people, the principle of proportional representation with preferential voting in multi-mandate constituencies was introduced. There is also an electoral barrier of 5% of votes, the method of d'Ondt dividers is used for the distribution of mandates among subjects of nomination lists, and the preferential principle is used between candidates. In addition, in 2001, changes were made to the legislation and the number of deputies of local councils was reduced, the purpose of such reforms is to reduce costs (Lendel M. (2012)).

The Constitution of the Czech Republic specifies that only local councils function as legitimate bodies of self-government (the regulatory basis for the functioning of the mayor's institute is provided for in the basic legislation on local self-government). Local representatives are elected on the basis of secret, universal, equal and direct suffrage for a period of 4 years, however, if legal grounds arise, the term of office of the current council may be terminated earlier. In the Czech Republic, local elections take place according to the proportional system in one or several multi-mandate constituencies. In order to structure the political spectrum in communities, an electoral threshold of 5% was established, which is valid for both individual parties and political blocs (Lendel M. (2012)).

The Constitution of the Slovak Republic of 1992 enshrined the provisions of the basic law that citizens who have lived in the territory of the community for a long period of time have the right to run for the positions of local deputies and mayors. Slovakia has chosen the model of direct elections of the highest community official – the mayor. The majority system of relative majority in multi-mandate constituencies is used for the election of council members in all types of communities (no more than 12 deputy mandates per constituency); as an exception, one electoral district may be formed in small rural communities (Article 9). A majoritarian system of absolute majority was proposed for the election of the mayor (Lendel M. (2012)).

At the same time, in 1998, in Slovakia, the parliament made changes to the legislation regarding the use of the proportional electoral system in local elections, but the Constitutional Court recognized

them as unconstitutional, considering it an attempt to influence the results of elections to local authorities with the help of legal changes (Lendel M. (2012).

At the same time, it should be noted that the Constitutions and legislation of foreign countries establish the political and legal prerequisites for the functioning of local democracy, that is, various forms of citizen participation in local self-government. These prerequisites include the activities of political parties (their local organizations) as the main constitutional means of influencing citizens on solving issues of local importance. It is believed that in classical democracies and newly democratic countries, parties play a leading role in the formation and implementation of local policies of local self-government bodies, etc., in the countries of transitional democracies, political parties do not or partially participate in the formation and implementation of local policies (Batanov O.V., Kampo V.M. (2006): 116-117).

O. Batanov and V. Campo state that foreign experience demonstrates the dominant role of political parties in local elections due to the use of proportional and mixed electoral systems and the creation of prerequisites for the formation of electoral coalitions, and later, a party-based parliamentary majority in municipal councils. One of the main trends in the development of local political life is the strengthening of the interaction between local self-government and political parties. In the conditions of a democratic society, parties play the role of an engine that sets in motion not only the state mechanism, but also the mechanism of local self-government, ensuring its normal functioning. The activities of local organizations of political parties in foreign countries are carried out on the basis of party statutes and laws on political parties. In essence, the legal institutionalization of political parties is due to the growth of their role and the need to strengthen the rule of law in foreign countries (Batanov O.V., Kampo V.M. (2006): 118).

The role of political parties in local elections in Ukraine. As for the activities of political parties in Ukraine, let's pay attention to the following point. Yes, in the Kyiv City Council of the IX convocation, deputy factions of the following political parties were formed: "European Solidarity", "UDAR (Ukrainian Democratic Alliance for Reforms) Vitaliy Klychka", "Unity", "Servant of the People", "All-Ukrainian Association "Batkivshchyna", "Voice".

A comparison of the main tasks of the parties "European Solidarity", "Fatherland" and "Servant of the People", for example, leads to the conclusion that the tasks of these political parties coincide, of course not literally, although "promoting the consolidation of society on the basis of universal values", even literally.

Therefore, even a superficial analysis of statutory documents shows that there are no significant differences in the ideology of the political forces mentioned.

It can be stated that their activities are not aimed at the implementation of various political courses for Ukraine, including at the local level, but are aimed at political struggle and the desire to obtain the relevant mandates. It can be said that such a situation is one of the shortcomings of multi-party systems, and actually eliminates civil society, members of the territorial community, in particular, from making management decisions. The two-party system, under the conditions of proportional electoral systems, demonstrates its greater effectiveness, as "democrats" and "conservatives", "laborers" and conservatives, in their programs and statutory documents define sufficiently opposite views on the methods of legal regulation of all spheres of public life.

Despite the trend towards the use of the proportional electoral system in the formation of public authorities of cities in European countries, we believe that the majoritarian electoral system is more optimal for local elections, when it comes to real contact of candidates with voters – members of the territorial community, the opportunity to study his biography, the ability to observe his activities, and the ability to access him, in the event that he receives a mandate. We consider the position of the Constitutional Court of the Republic of Slovakia to be correct, that the introduction of a proportional electoral system reflects the efforts of political parties that are part of the parliament

to control and have a significant influence on the activities of local councils – bodies of local self-government.

Formation of non-representative local public authorities. We know that the public authorities of cities are not limited exclusively to representative bodies of local self-government. Thus, city councils form their executive bodies, in the cities of Kyiv and Sevastopol the functions of executive bodies are performed by local state administrations formed in accordance with Art. 118, 119 of the Constitution of Ukraine, the Law of Ukraine "On Local State Administrations", the Law of Ukraine "On Civil Service", territorial bodies of central executive bodies also function in cities.

Civil service legislation applies to employees of local self-government bodies, which, on the one hand, is logical, since Part 2 of Art. 19 of the Constitution of Ukraine (Constitution of Ukraine, 1996) which defines the legal content of the principle of legality for bodies and officials of public authorities, that is, state authorities and local self-government bodies, on the other hand, introduces a certain misunderstanding regarding the constitutional and legal status of local self-government employees. Which do not implement the functions of the state, but carry out activities aimed at the realization by the territorial community of its right to local self-government and separate powers of the executive authorities granted by law.

In the cities of Kyiv and Sevastopol, the bodies of the city's public power are local state administrations, both city and district in the city.

Art. 118 of the Basic Law specifies that the head of the local state administration is appointed by the President of Ukraine on the proposal of the Cabinet of Ministers of Ukraine, and the composition of local state administrations is formed by the heads of local state administrations.

At the same time, the heads of local state administrations are not completely free in the process of forming structural subdivisions of the district, district in Kyiv and Sevastopol state administration, in this process they are guided by the recommended lists of structural subdivisions of the district state administration in Kyiv and Sevastopol and Kyiv and Sevastopol city state administrations, approved by the Resolution of the Cabinet of Ministers of Ukraine dated April 18, 2012 No. 606 (as amended by the Resolution of the Cabinet of Ministers of Ukraine dated December 28, 2020 No. 1336), which in general in practice is perceived as a model.

As for territorial bodies of ministries and other central bodies of executive power, they can be formed, including in Kyiv and Sevastopol, districts in cities, including these. Territorial bodies are subordinate to the relevant ministry, another central body of executive power, and lower-level territorial bodies are also subordinate to higher-level territorial bodies. The heads of local state administrations coordinate the activities of territorial bodies and assist them in fulfilling the tasks assigned to these bodies (Pro zatverdzhennia Typovoho polozhennia pro terytorialni orhany ministerstva ta inshoho tsentralnoho orhanu vykonavchoi vlady (2011).

The conditions for conducting a competition for civil service positions are a painstaking process both for public authorities and for the contestant himself. Because the organizational process requires compliance with clear terms and procedures from both the employer and the person wishing to become a civil servant. This state of affairs in a certain way reveals really motivated individuals, since all competitive tests set a high bar and demands on candidates. But such a component of competitive selection as passing a test is not a universal way of determining the level of knowledge, which is an important component of the requirements for candidates for civil service positions.

Conclusions. The Constitution of Ukraine does not contain separate provisions on the management of cities. Norms determining the procedure for the implementation of appropriate management are contained in various sections of the Basic Law, which in turn relate to the construction of the state apparatus in general and the principles of local self-government in Ukraine. Regulatory and legal regulation of the organization and activities of local public authorities of cities in Ukraine creates a dualistic system that includes local state executive authorities, which in turn include local state

administrations and territorial bodies of central executive authorities – on the one hand, and city mayors, the city council and its executive body, which are local self-government bodies, on the other. Separately, the Constitution of Ukraine notes the special status of the two cities, referring to special laws regarding the organization of governance in them.

As of today, the constitutional and legal regulation of the organization and activity of local public authorities of cities in Ukraine needs to be reviewed, taking into account the problems of implementing local public authority in Ukraine, while approaches to the corresponding reform should take into account the successful experience of EU countries.

The choice of the electoral system for the formation of representative bodies of the public authorities of cities is determined by the competence of the relevant bodies. In Ukraine, in recent years, there has been a tendency to choose the methods of formation of local self-government bodies based on political interests, and not on the interests of territorial communities. At the same time, the electoral legislation of Ukraine, which regulates the issue of the formation of representative bodies of public authorities of cities, is not characterized by stability, which negatively affects the implementation of direct democracy on the ground in Ukraine.

References:

1. Batanov O.V., Kampo V.M. (2006) *Munitsypalne pravo zarubizhnykh krain: Navchalnyi posibnyk u 2 chastynakh* [Municipal law of foreign countries: tutorial in 2 parts]. Kyiv: Znannia Ukrainy, vol. 1, p. 148. (in Ukrainian).
2. The Verkhovna Rada of Ukraine (1996) *Konstytutsiia Ukrainy* [Constitution of Ukraine]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (in Ukrainian).
3. Lendel M. (2012) *Systemy vyboriv do mistsevykh orhaniv vlady u krainakh tsentralnoi ta skhidnoi Yevropy: dosvid dlia Ukrainy* [Election systems to local authorities in the countries of Central and Eastern Europe: experience for Ukraine]. *Analitychna zapyska, Rehionalnyi filial NISD v m. Uzhhorod* (electronic journal). Retrieved from: <https://niss.gov.ua/doslidzhennya/politika/sistemi-vyboriv-do-miscevikh-organiv-vlady-u-krainakh-centralnoi-ta-skhidnoi> (in Ukrainian).
4. Mykhalchenko M., Samchuk Z. (2010) *Porivnialnyi analiz yevropeiskykh vyborchykh system* [Comparative analysis of European electoral systems]. *IPiEND im. I. F. Kurasa NAN Ukrainy Naukovi zapysky*, vol. 50. pp. 267–286. (in Ukrainian).
5. Government of Ukraine (2011) *Postanova Kabinetu Ministriv Ukrainy vid 25 travnia 2011 r. № 563 Pro zatverdzhennia Typovoho polozhennia pro terytorialni orhany ministerstva ta inshoho tsentralnogo orhanu vykonavchoi vlady* [Resolution of the Government of Ukraine dated May 25, 2011 № 563 On the approval of the Standard Regulation on the territorial bodies of the Ministry and other central bodies of the executive power]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/563-2011-%D0%BF#Text> (in Ukrainian).
6. The Verkhovna Rada of Ukraine (2019) *Vyborchy kodeks Ukrainy: Zakon Ukrainy vid 19.12.2019 № 396-IX, ostanni zminy 15.03.2022* [Election Code of Ukraine: Law of Ukraine dated 19.12.2019 № 396-IX, last amended 15.03.2022]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/396-20#Text> (in Ukrainian).