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BUILDING ON POLISH EXPERIENCE OF LOCAL SELF-GOVERNMENT DEVELOPMENT IN UKRAINE AS A FORM OF COOPERATION BETWEEN COUNTRIES

Summary. The article considers some aspects of the Polish experience of reforming local self-government and administrative-territorial organization. The historical reasons for the development of the institute of local self-government in Poland are analyzed, its legal basis, the competence of local self-government bodies is characterized, in particular, the main powers of the commune council and county council are determined. The peculiarities of the administrative-territorial structure of Poland in the aspect of the possibility of borrowing experience of territorial transformations are determined.

Key words: decentralization reform, local self-government, administrative-territorial organization.

ЗАПОЗИЧЕННЯ ПОЛЬСЬКОГО ДОСВІДУ РОЗВИТКУ МІСЦЕВОГО САМОВРЯДУВАННЯ В УКРАЇНІ ЯК ФОРМА СПІВПРАЦІ МІЖ КРАЇНАМИ

Анотація. Розглядаються окремі аспекти польського досвіду реформування місцевого самоврядування та адміністративно-територіального устрою. Проаналізовано історичні причини розвитку інституту місцевого самоврядування в Польщі, його правові основи; охарактеризовано компетенцію органів місцевого самоврядування, зокрема визначено основні повноваження ради гміни та ради повіту. Визначено особливості адміністративно-територіального устрою Польщі в аспекті можливості запозичення досвіду територіальних перетворень.

Ключові слова: реформа децентралізації, місцеве самоврядування, адміністративно-територіальний устрій.

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Introduction. The history of the development of the Polish and Ukrainian states has a lot in common. Furthermore, strong traditions of cooperation and mutual assistance only confirm the friendly relations between the countries. The sphere of state-building is no exception, in particular, the experience of decentralization reform carried out in Poland. For quite a long time, Ukrainian scientific researches have argued that the Polish experience of territorial self-government is one of the best, in particular, for Ukraine³.

During the meeting of the President of Ukraine with the diplomats of the Visegrad Group, taken place in 2014, readiness to join specific areas of reform in Ukraine was expressed. Also, it was determined that Poland will help in the implementation of decentralization, local government reform and public financial management⁴.

Cooperation and exchange of experience between Poland and Ukraine takes place also at the local level. For example, the Polish-Ukrainian Forum of Local Self-Government was regularly held in Kharkiv, where ways to modernize local self-government and use the positive Polish practice of public local government organization were actively discussed⁵.

In the spring of 2022, the deputies of the Lublin City Council unanimously decided to conclude a partnership agreement between the cities of Lublin (Poland) and Kharkiv. Kharkiv will become the eighth Ukrainian partner city of Lublin, along with Lviv, Sumy, Starobilsk, Ivano-Frankivsk, Rivne, Luhansk and Lutsk. Details on signing the contract will be agreed in the nearest future⁶.

³ Hudz, L. (2020). Polska ta ukrainska modeli detsentralizatsii: porivnialnyi analiz [Polish and Ukrainian models of decentralization: a comparative analysis]. *Visnyk Kharkivskoho natsionalnoho universytetu imeni V.N. Karazina. Seriya "Pravo"* – *Bulletin of Kharkiv National University named after V.N. Karazin. Series "Law"*, no. 29, pp. 95–96 (in Ukrainian).

⁴ Press service of the President of Ukraine (2014). Prezydent Ukrainy proviv zustrich z delehatsiieiu Vyshehradskoi hrupy [President of Ukraine held a meeting with the delegation of the Visegrad Group]. Retrieved from: <http://www.president.gov.ua/news/prezident-ukrayini-proviv-zustrichzdelegaciyeyu-vishegrads-34386> (in Ukrainian).

⁵ Kharkiv Regional State Administration (2017). Na Kharkivshchyni vidbudetsia II Polsko-ukrainskyi forum mistsevoho samovriaduvannia [The 2nd Polish-Ukrainian Local Self-Government Forum will be held in Kharkiv region]. Retrieved from: <https://kharkivoda.gov.ua/news/89720?sv> (in Ukrainian).

⁶ Terekhov, I. (2022). Kharkiv stane mistom-partnerom Liublina [Kharkiv will become a partner city of Lublin]. *Ofitsiinyi sait Kharkivskoi miskoi rady, miskoho holovy, vykonavchoho komitetu – The official website of the Kharkiv City Council, the Mayor, and the Executive Committee*. Retrieved from: <https://city.kharkov.ua/uk/news/kharkiv-stane-mistom-partnerom-lyublina-50549.html> (in Ukrainian).

The latest confirmation of Polish assistance is the visit of President A. Duda to Ukraine in May 2022, during which he supported our state in the fight against Russian aggression and assured of further cooperation.

In general, the interaction between Ukraine and Poland has only intensified in recent years. One of the main areas of such cooperation is the organization of territorial government, local government reform and decentralization. Since 2014, Ukraine has been actively implementing Poland's experience in building European-style municipal government. Therefore, we will focus our attention on the analysis of building local self-government in Poland.

1. Historical preconditions for the organization of municipal government in Poland

The process of transforming the system of local self-government in Poland began in 1990 with amendments to the Polish Constitution. This task was undertaken by the first (so-called "contract") Seimas, formed as a result of the partially free parliamentary elections of 1989. Starting the reform of the state, it took as a starting point the thesis that Poles want and can take responsibility for their city or village, because they know better than the central government how to establish governance for the public good. It was the citizens who had to take matters into their own hands and build their own state and who had to trust politicians with the right to govern.

Coming back to local self-government in the classical sense of the institution became possible after the introduction of self-government in the commune under the Law "On Territorial Self-Government" of March 8, 1990 (which since 1999 was called "On self-government in the commune")⁷.

The adoption of the Law "On Territorial Self-Government" signified the first step of reform. However, the reform introduced elected local governments only at the municipal level (*gminas*), while higher levels of territorial organization remained under the control of the state local administration. According to Art. 1 of this law, *gminas* were defined as associations of citizens living in a certain area. Restoring self-government in commune Polish government returned to the traditions of the Second Polish-Lithuanian Commonwealth (*Rzeczpospolita*), but at the same time, which was not typical for post-communist countries, they put an end to

⁷ Sejm of the Republic of Poland (1996). Ustawa z dnia 8 marca 1990 roku o samorządzie gminnym (ze zmianami) [Act of March 8, 1990 on the commune self-government (as amended)]. *Dziennik Ustaw Rzeczypospolitej Polskiej – Journal of Laws of the Republic of Poland*, no. 13, art. 74 (in Polish).

Soviet-type institutions – people’s councils. Communes as the most important units of the territorial structure of the state appeared instead of such councils. They had independent budget, legal entity, communal property and clearly defined competence.

In April 1992 the Seimas passed the Constitutional Law (the so-called “Small Constitution”), which amended constitution in force. This document reflects all the major changes that have taken place since 1989. In the Small Constitution of 1992, a separate section was given to territorial self-government. However, territorial self-government meant self-government of gminas. At the same time the Seimas continued to work on a new Constitution. Numerous differences in the process of this work concerned different administrative levels and structures of local government.

The accession to the European Charter of Local Self-Government in 1994 had a significant impact on the formation of territorial self-government in Poland. In particular, the Polish territorial self-government adopted such principles as homogeneity of decisions, three-level, broad decentralization, guaranteeing independence and protection of self-government rights, organization of supervision over observance of legislation, etc. The impact of EU law was also significant. Already in the 1990s, the process of harmonization of Polish law with EU law began, which also affected territorial self-government⁸.

In April 1997, following a referendum, a new Polish Constitution was adopted. It stated that Poland was a unitary state, and the consolidation of local self-government at the constitutional level clearly strengthened the decentralization of public power. The new Constitution of Poland has become the most important legal guarantee of local self-government, defining the main principles of this institution – subsidiarity (Preamble) and decentralization (Article 15) as fundamental provisions for system of public administration⁹.

⁸ Kaminski, M. (2000). Dosvid provedennia administratyvnoi reformy v Polshchi i mozhyvosti yoho zastosuvannia v Ukraini [The experience of administrative reform in Poland and the possibility of its application in Ukraine]. *Ekonomichnyi chasopys – Economic journal*, no. 7–8, pp. 18–19 (in Ukrainian).

⁹ Sejm of the Republic of Poland (1997). Konstytucja Rzeczypospolitej Polskiej, uchwalony 2 kwietnia 1997 roku przez Zgromadzenie Narodowe, zatwierdzony w ogólnonarodowym referendum 25 maja 1997 roku [The Constitution of the Republic of Poland, adopted on April 2, 1997 by the National Assembly, approved in a national referendum on May 25, 1997]. *Dziennik Ustaw Rzeczypospolitej Polskiej – Journal of Laws of the Republic of Poland*, no. 78, art. 483 (in Polish).

On June 5, 1998, the Sejm of the Republic of Poland passed the laws “On County Self-Government”¹⁰ and “On the self-government of the voivodeship”, which entered into force on January 1, 1999, and on July 28 the Law “On the introduction of three-level territorial division of the state”¹¹. Thus a three-level territorial division of the state into gminas, counties (*powiat*) and voivodeships was created. The number of voivodeships was reduced from 49 to 16. The newly created municipal voivodeships were headed by a marshal and a voivodship administration, as well as voivodship sejms. However, at the voivodship level the representation of the central government was left – the voivode with his administration. Thus, a municipal government hybrid organism, duplicating its functions and extremely valuable to maintain, emerged. In this way the organizational structure of the country was unified, but its transformation from departmental-territorial to territorial was ensured. This brought Poland closer to European standards of territorial organization and the structure of local self-government, which were based on the principles of subsidiarity, efficiency, transparency and others. These laws consolidated and finally formed the legal basis for local self-government.

2. Legal basis of local self-government in Poland

The Polish Basic Law establishes the following principles of functioning of local self-government bodies: subsidiarity, independence, presumption of local self-government powers, decentralization and unitarity.

The principle of presumption of powers of local self-government is mentioned in Art. 163 of the Basic Law of Poland and assigns to territorial self-government all tasks that are not provided by the Constitution or laws for other public authorities. This avoids a significant number of jurisdictional disputes and organizes decentralized governance. In case of

¹⁰ Sejm of the Republic of Poland (2001a). Ustawa z dnia 5 czerwca 1998 r. o samorządzie powiatowym (tekst jednolity) [Act of 5 June 1998 on powiat self-government (uniform text)]. *Dziennik Ustaw Rzeczypospolitej Polskiej – Journal of Laws of the Republic of Poland*, no. 142, art. 1592 (in Polish).

¹¹ Sejm of the Republic of Poland (2001b). Ustawa z dnia 5 czerwca 1998 r. o samorządzie województwa [Act of June 5, 1998 on voivodship self-government]. *Dziennik Ustaw Rzeczypospolitej Polskiej – Journal of Laws of the Republic of Poland*, no. 142, art. 1590 (in Polish).

a conflict of powers, the issue of delimitation of competence is decided by the administrative court.

The principle of decentralization is defined in Art. 15 of the Polish Constitution. It is based on the division of functions and powers between different levels of state and municipal government, meaning that a significant part of them is transferred to lower levels of public authority, as close as possible to consumers of management services. At the same time, the lowest (basic) level of such an organization is the level of the community (gmina). In general, the Constitution of Poland can be considered exemplary in terms of consolidating the basic principles of local self-government, their system and compliance with the latest trends in municipalism.

The Constitution of the Republic of Poland of 1997 emphasizes that territorial self-government performs public tasks not referred to the competence of other public authorities by the Constitution or laws (Article 163). It determines the division of local self-government bodies into representative (constituent) and executive ones. Constitutional name of these bodies determines their functional distinction: the constituent ones must establish certain rules of conduct, while the executive ones must implement the decisions made by the representation. At the same time, the constitution is limited to the use of generic names of local governments, their specification should be determined in current legislation.

According to Art. 11 of the Law “On Commune Self-Government” the bodies of local self-government of the commune (gmina) are the council of the commune and the *wojt* (mayor), as well as executive bodies. The council is a representative body that operates on the basis of collegiality, periodic re-election and sessional form of work (Article 20). It performs rule-making, representative and control functions. The term of office of the council is 4 years and is calculated from the date of the election. The composition of council depends on population – from 15 in communes with up to 20 000 inhabitants to 25 in in communes with up to 200 000 inhabitants and three for every next 100,000 inhabitants, but not more than 45 deputies (Article 17)¹².

¹² Regulski, J. (2003). *Local government reform in Poland: an insider's story*. Budapest: Local Government and Public Service Reform Initiative, Open Society Institute, p. 163 (in English).

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According to Part 1 of Art. 26 of the Law "On Commune Self-Government" the executive body of the commune is the *wojt* (mayor). Until 2002, the *wojt* was elected by the council, and his candidacy was submitted by the chairman of the *gmina* council. Since 2002, the *wojt* has been elected in general elections, which strengthens his position in the system of local self-government.

The county self-government bodies are the county council (representative body) and the county board headed by the headman (executive power) (Article 8 of the Law on County Self-Government)¹³. In the county town, these functions are performed by the city council and the mayor. The county council is a rule-making, representative and control body of the county self-government, elected for a four-year term (Article 9). The number of deputies called "councilors" (minimum 20, maximum 60) depends on the population of the county. The mandate of a county deputy cannot be combined with the mandate of a deputy of a commune or voivodeship. Session meetings of the county council are held, as a rule, once a quarter, if necessary, more often (Article 15). The county council elects the chairman of the council, one or two deputies, the board and the chairman of the board – the mayor. The county council creates permanent and temporary commissions from among its members, determines the subject of their activity and elects the members of the commission. The commission is accountable to the council, submits to it for approval the work plan, as well as a report on its activities (Article 17).

At the voivodship level, local self-government is combined with public administration. The government administration in the voivodeship is represented by the *voivode*, who is appointed by the Prime Minister on the proposal of the Minister of the Interior and Administration, as well as subordinate heads of general services, inspections and guards, bodies of general competence (Article 10 of the Law on Government Administration in the Voivodeship)¹⁴.

¹³ Sejm of the Republic of Poland (2001a). Ustawa z dnia 5 czerwca 1998 r. o samorządzie powiatowym (tekst jednolity) [Act of 5 June 1998 on poviats self-government (uniform text)]. *Dziennik Ustaw Rzeczypospolitej Polskiej – Journal of Laws of the Republic of Poland*, no. 142, art. 1592 (in Polish).

¹⁴ Sejm of the Republic of Poland (1998). Ustawa z dnia 5 czerwca 1998 r. o administracji rządowej w województwie [Act of June 5, 1998 on government administration in the voivodeship]. *Dziennik Ustaw Rzeczypospolitej Polskiej – Journal of Laws of the Republic of Poland*, no. 91, art. 577 (in Polish).

As a representative of the voivode's government, he is responsible for the implementation of government policy in the voivodeship. Vice-voivodes are appointed and dismissed on the proposal of the voivode by the Chairman of the Council of Ministers. Heads of local executive bodies are appointed and dismissed at the request or with the consent of the voivode.

The bodies of local self-government of the voivodship are the sejmik and the board of the voivodeship (Article 15 of the Law "On self-government of voivodeships")¹⁵. The sejmik is elected by universal suffrage for a term of 4 years. The Marshal (Chairman) of the sejmik is elected by the sejmik deputies from among its members by an absolute majority of votes by secret ballot. Also, deputies of the Sejm elect by an absolute majority of votes in the presence of at least half of the Sejm by secret ballot no more than three vice-marshals (vice-chairmen) of the Sejm. The Voivodeship Board, consisting of a marshal, vice-marshals and three members, is an executive body.

3. Powers of local self-government

Polish municipal law provides for the division of competences of local governments into own and delegated. According to Art. 166 of the Polish Constitution, public tasks that serve the needs of the self-governing community are performed by the unit of territorial self-government as its own tasks. If this follows from the justified needs of the state, the law may entrust territorial self-government units with other public tasks. The law determines the procedure for transfer and the method of performing the assigned tasks.

According to Art. 18 of the Law of Poland "On Commune Self-Government", the own (exclusive) competence of the commune council includes: adoption of the statute of the commune; election and recall of the board of the gmina, determination of the directions of its activity, approval of reports on its activity; adoption of local landscaping plans and economic programs etc. The Law "On County Self-Government" stipulates that the county council's competence includes: adoption of local legal acts, including the county charter; election and removal of the board; determining the activities of the county board, hearing

¹⁵ Sejm of the Republic of Poland (2001b). Ustawa z dnia 5 czerwca 1998 r. o samorządzie województwa [Act of June 5, 1998 on voivodship self-government]. *Dziennik Ustaw Rzeczypospolitej Polskiej – Journal of Laws of the Republic of Poland*, no. 142, art. 1590 (in Polish).

a report on the activities of the board, including financial activities etc. (Article 12). The competence of the sejmik is determined in Article 18 of the Law "On Self-Government in the Voivodeship".

4. Territorial organization of power

The modern administrative-territorial structure of Poland was introduced on January 1, 1999, when the previous two-level division, which had existed since 1975, was changed to a three-level. As a result of the reform, 16 voivodships and 308 rural and 65 urban counties were created. The commune became the basic link of the territorial organization of Poland. At the same time, as a result of the reform, the number of gminas as basic self-governing units was reduced by almost four times – from 9,5 thousand in 1955 to 2 489 thousand in 1999.

It should be noted that in Poland, in resolving the issue of reforming the administrative-territorial system, one of the most controversial issues was the ratio of state and self-government in the voivodeship. Some authors argue that the new province is similar to the French departments and regions: it is a self-governing structure of the state, represents the interests of a particular region and at the same time hinders the spread of ideas about autonomy¹⁶.

Since then, the administrative-territorial structure of Poland has undergone only minor changes: in 2003 one county was liquidated (later restored in 2013). In 2010 1 gmina was formed, in 2015 one gmina was liquidated. Currently (as of January 1, 2022) there are 2 478 gminas in Poland.

In Ukraine, which is 1,9 times larger than Poland, before the voluntary unification of territorial communities of self-governing units of basic level was 4,6 times larger than in the Republic of Poland. At the same time, in Ukraine, one self-governing unit of the basic level has much less population than in Poland¹⁷. Since 2020, Ukraine has approved a new administrative-territorial structure of the state, according to which a new basic and subregional level has been formed: 1 470 communities and 119 districts.

¹⁶ Dolnicki, B. (2009). *Samorząd terytorialny [Local government]*. 4th ed. Warszawa: Wolters Kluwer Polska Sp. z o.o., p. 21–22 (in Polish).

¹⁷ Popova, O. (2015) Reformuiemo mistseve samovriaduvannia "iak u Polshchi": khto bilshe? [We are reforming local self-government "as in Poland": who is more?]. *Dzerkalo tyzhnia – Mirror of the week*. Retrieved from: https://dt.ua/internal/reformuyemo-misceve-samovryaduvannya-yak-u-polschi-hto-bilshe_.html (in Ukrainian).

It is important to take into account other factors and features, namely population density and size of settlements, the state of social infrastructure (especially rural roads) and so on. In rural areas of Ukraine the population density is lower than in Poland, rural settlement is more scattered. In addition, the number of villages is larger. It is obvious that with a higher concentration of small settlements in a certain area, as is the case in Poland, it is better to form them into a self-governing unit. The more scattered structure of rural settlements in Ukraine, more populous villages, large differences in the interests and needs of residents of different villages will complicate this process.

The second (intermediate) link in the territorial organization of Poland is the county. Today, there are 380 counties in Poland, of which 66 cities with the status of counties, which together with the tasks of the commune nature implement the tasks and powers of county self-government bodies, and 314 rural counties. The third level of Poland's territorial organization is the voivodeship, which is the largest territorial unit and the basis for regional self-government. The voivodships include a different number of counties – from 11 to 38 and gminas – from 71 to 325.

In Ukraine, in 2020, a new administrative-territorial structure of the state was approved, according to which a new basic and subregional level was formed: 1 470 communities and 119 districts.

Conclusions. The Constitution of Poland pays significant attention to issues of local self-government. Poland has introduced a European continental system of local self-government, based on a combination of election and appointment of local authorities, direct local government and local self-government. However, the Polish model of local self-government has national specifics. In particular, the “weak council – strong mayor” model is used at the basic level in Poland. The model of local self-government at all three levels is twofold: primary competence is divided between a representative collegial body (gmina council, county council, voivodeship sejmik) and a single (wojt, burgomaster, mayor) or collegial (county, voivodship) executive body. The current scope of local self-government in Poland is a consequence of the decentralization processes.

The principle of subsidiarity is the basis for the division of powers between the levels of local self-government in Poland. In this way, local

self-government acquires the character of “step-by-step power”. As a result, powers and responsibilities are distributed in such a way that local authorities are empowered to address the vast majority of issues of local importance, thus meeting the urgent needs of the local population.

The territorial basis of local self-government is based on the administrative-territorial structure of the state, with the basic unit of local self-government being the gmina, which does not coincide with the boundaries of settlements.

Undoubtedly, the research and use of the Polish experience in the organization of local self-government in Ukraine will promote further cooperation between the two countries. It is on the basis of the positive Polish example that after the Ukrainian Victory it is necessary to complete amendments to the Constitution of Ukraine in terms of decentralization of power, bring the constitutional model of local self-government to the standards of the European Charter of Local Self-Government. In disputes between the powers of local executive bodies and local self-government should be given to the latter.

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