

REFERENCES

1. L. Afanasev Rodina, N. Ostrovsky, S. Zuckerberg United transport system and road transport.-M: Transport, 1984.-336c.
2. A. Vorkut Automobile cargo transportation - Kiev, 1986. - 447 C.

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SOME ISSUES OF INTERACTION BETWEEN LOCAL BODIES OF STATE POWER AND LOCAL SELF-GOVERNMENT IN THE MEMBER STATES OF THE EUROPEAN UNION

The issue of interaction of local state authorities and local self-government bodies is characteristic not only of Ukraine, but also of the EU countries. Its practical solution will help settle important conflicts arising in the process of cooperation of public authorities. However over the long years of local self-government establishment and development in Europe, no final solution of such issue has been found.

In the best European practice, different ways of cooperation of state government and local self-government authorities can be named. Usually in modern states, two main local self-government systems are distinguished: Anglo-Saxon and continental.

The Anglo-Saxon system is a characteristic of Great Britain, and the continental system is common in the participating countries of the European Union – France, Germany, Italy, Spain etc. It is based on the direct state administration at the local level and local government. Representatives of the state in administrative and territorial units have a certain range of own functions and authorities, including authorities in respect of cooperation with local self-government bodies both of controlling and of coordinating nature.

Expansion of authorities of local self-government bodies contributes to lower power concentration in hands of state authorities; however in European countries the center still retains significant positions at the local level. In the practice of local government organization, it can be traced in the following way: state representatives or bodies authorized to control the activity of local authority exist in administrative and territorial units side by side with local self-government bodies; alongside with self-government administrations, in their territory there are subdivisions of central ministries performing industry management; in case of unlawful actions or decisions, administrative enforcement measures can be applied to local government authorities; policy orientation towards the unification of local self-government authorities and the status of local communities within the whole territory of the state.

In most EU countries, the state independently establishes the minimum

of expenses, number of population, which is connected with execution of this or that authority. In none of the European countries, delimiting of competence of local self-government and the state constitutes a result of a preliminary elaborated mechanism.

Legislation of European countries provides for maximum demarcation of the administration of a state (its executive branch) on the one hand, and local self-government – on the other. Local administrations, the names whereof vary depending on a country, have authorities predominantly within the issues actually belonging to the sphere of the state's competence. They are subordinated to the head authority of executive power (government) or ministries (for Ministry of Interior). The most common combination of functions of a state authority and executive local self-government authority in the EU countries is characteristic namely of local self-government authorities. In Hungary, the government can also entrust a burgomaster (head of local self-government), a secretary or a head of the administration of a municipal representative body, with functions of the head of administration at the local (municipal) level.

The continental system of local self-government can be well traced in France, where during the administrative system reform an individual scope of authorities was defined for each territorial level of power. Other authorities of local government bodies, which are not referred to state competence, follow the principle of general competence or "negative" regulation. In accordance therewith, local self-government bodies are entitled to perform such actions, which are not expressly prohibited by the law and not vested in any other government bodies, i.e. they have the general competence to solve local issues within the law. Thus, in accordance with p.2 art. 140 of the Czech Republic Constitution 1922, representative community bodies make self-government decisions as they are not referred by the law to the competence of the higher territorial self-government unit. In the Constitution of the Federal Republic of Germany, it is specifically stated that citizens must have the right to regulate within the law and on their own responsibility all local community matters. However, in a more detailed form such principle is set out in constitutions of German lands.

In the most general form, the principle of "negative" authority regulation is fixed in the European Charter on Local Self-Government stating that local self-government bodies shall be fully entitled within the law to decide any issue, which is not excluded from their competence and which was not assigned to any other agency (art. 4).

The necessity of vesting state powers in local self-government authorities was realized by legislators of European states. As a result, legislation of a series of foreign states distinguishes between mandatory, vested (delegated) and optional (own) powers of local government bodies.

At the same time, foreign experience in the sphere of power delegation in a comprehensive general-theoretical form still remains understudied today.

Assignment of these or those state powers to local self-government bodies allows avoiding a number of quite significant problems, solution whereof helps: a) avoid unnecessary power concentration at the central level and central government overloading with local issues; b) ensure participation of population in execution of governmental authorities in a political procedure; c) ensure rapprochement of the state with civil society; d) an perform rationalization and optimization of municipal government on the whole etc.

Powers are, as a rule, delegated from state administrations to representative local self-government bodies (and between local self-government bodies as well), but not vice versa. The practice of power delegation (and namely those connected with execution of state functions) from state administrative bodies to local self-government bodies is most common in Estonia, Federal Republic of Germany, Lithuania, Czech Republic.

Subsidiarity principle constitutes one of the delegation fundamentals and means that the widest range of powers must be executed actually by those authorities that are the closest to average citizens and that are capable of effective execution of such powers. Local self-government shall be performed at all levels of territorial power organization, and state government shall play a supplementary part in the sustainment of local communities.

In the delegation procedure, local government bodies act exclusively as an instrument of its proper execution in accordance with the subsidiarity principle. In this case, the issue of possibility and expediency of state powers delegation to local government bodies is of no primary importance. More important is the issue of essential characteristics of requirements set to such delegation procedure.

Assigned (delegate) powers of local agencies are delegated on the basis of special laws with possible conclusion of supplementary agreements.

In Germany, for example, the competence of local self-government bodies in accordance with the traditional communal law includes independent assignments originating from community self-government (own assignments) and those delegated from communal bodies of municipal government. Delegated assignments usually include functions imposed by the legislation of lands.

Execution by local self-government bodies of the imposed state assignments is connected with considerable expenses. Thus, it may cause threat to financial independence, and disturbance of relative communal autonomy, which may result in failure to perform own functions. In order to prevent these and any other unfavorable consequences, legislation of European countries and international legal acts contain provisions on the mandatory transfer of necessary material resources in delegation of state-governmental powers to local self-government bodies.

Meanwhile, the assigned powers retain their state and legal nature; state government bodies control both, execution of assigned powers and utilization of transferred funds and resources, and reserve their right to give instructions on implementation of such powers.

The issue of cooperation of local state government bodies and local self-government agencies is also affected by administrative and territorial structure of the European Union member states. The states build their system of local self-government agencies depending on their structure: complex structure – three-level (Italy), four-level (BRD), five-level (France) systems. However it fails to ensure settlement of conflicts between state bodies and community agencies, and, vice versa, aggravates them. In our opinion, competence could be quite successfully distributed according to the types of bodies. Thus, only a representative governmental body at the local level can make decisions on the main issues of local life and ensure management of local community's finances.

In European countries, local administration performs no functions of an executive local self-government body and receives no delegated powers from representative bodies; there is also no institution for impeachment of the head of local state administration on the part of local self-government agency. In the Netherlands, mayors are formally appointed by the Queen in accordance with recommendations of a municipal council, but she usually doesn't reject the proposed candidates. At the same time, territorial state administrations in some cases can influence the appointment of separate heads of local services (Poland).

Thus, control of the state over local self-government and cooperation between them is implemented via state representatives at the local level. In Unitarian states, local-level administration is performed by bodies authorized by the central government, and in most federative states issues of self-government are referred to the competence of regions. They independently determine legal and organizational structure of local self-government, and thus each of them has its own municipal system.

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SOME ASPECTS OF THE HISTORICAL EXPERIENCE OF LOCAL SELF-GOVERNMENT IN UKRAINE

The development of local self-government is a very important issue in terms of very acute social and political crisis in Ukraine. There is an objective need for the revision of Ukrainian legislation, a specification of the legal status and empowerment of local government in Ukraine in particular. Today the revision of Section XI (Articles 140-146) of the Constitution of Ukraine is of great interest.

150 years ago during the development of the Russian absolutist kingdoms during the reform it was possible to adopt the Zemska reform in 1864 - the creation of provinces and districts of rural institutions. Local self-gov-