

## INNOVATION, WORK, SOCIETY

PRINCIPLES OF LOCAL GOVERNMENT: TERMINOLOGICAL ISSUES  
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**Summary**

The aim of the article is to analyze the terminological diversity of how Ukrainian researchers name the principles related to local self-government ("principles of local self-government", "principles of municipalism", etc.), as well as to develop proposals for ordering and systematizing these concepts.

The author starts with the thesis, that in Ukrainian legal literature, since the declaration of independence, considerable attention has been paid to the development of local self-government. Such developments are relevant even today – because the municipal reform is ongoing, which slowed down only during the period of martial law. The author concludes, that in the Ukrainian legal literature, there is a lack of monographic studies of the principles of local self-government, carried out in recent years. Despite the high scientific and practical relevance, such studies would contribute to terminological unification in the field of municipal axiology – for example, the works of Ukrainian authors refer to "principles of local self-government", "constitutional principles of local self-government", "principles of municipalism", "principles of modern of Ukrainian municipalism", others. Terminological unification will contribute to the improvement of the quality of both Ukrainian municipal legislation and the intensification of municipal legal research.

**Key words:** local self-government, municipal administration, territorial collective, values of local self-government in Ukraine, municipal axiology.

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**1. Introduction**

In Ukrainian legal literature, since the declaration of independence, considerable attention has been paid to the development of local self-government. Such developments are relevant even today – because the municipal reform is ongoing, it is slowed down only during the period of martial law. However, after its cancellation, the issue of completing the next stage of the municipal reform will become relevant again, and therefore, an important scientific task for now is the formation of an appropriate doctrinal basis for the continuation of this reform.

The concept of "principles of local self-government" is quite common in Ukrainian legal literature. It is used along with others – in order to understand the correlation between different concepts and formulate an idea about their essence, when writing this article, the works of O.V. Batanov, I.A. Galiahmetov, B.V. Kalinovsky and other authors (*for example, Qaracayev, 2022 and Mishyna, 2021, 2022*).

In this article the author uses the research methodological approaches as follows: antropocentric, axiological, systematical. In this article the author uses the research methods as follows: comparative, inductive, deductive, legal analysis, legal synthesis, hermeneutical and doctrinal research.

The aim of the article is to analyze the terminological diversity of how Ukrainian researchers name the principles related to local self-government ("principles of local self-government", "principles of municipalism", etc.), as well as to develop proposals for ordering and systematizing these concepts.

## 2. The terminological variety in the Ukrainian municipal literature

At the current stage, the concept of "principles of local self-government" is the most common in Ukrainian legal literature.

For example, it is used by V.V. Kravchenko and M.V. Pitsyk. In their textbook on municipal law, the co-authors formulated that "the principles of local self-government are the basic principles determined by the tasks and functions of local self-government, which form the basis of its organization and functioning and which determine the features and characteristics of local self-government" (*Kravchenko and Pitsyk, 2003: 66*). This definition is concise and laconic.

The concept of "principles of local self-government" is found in the works of the well-known expert on municipal law P.M. Lyubchenko. He expressed the opinion that the principles of local self-government are "the basic principles, ideas and requirements determined by the nature of public power, which underlie the organization and functioning of local self-government, the regulation of social relations, determine the forms and methods of activity of local self-government subjects" (*Lubchenko, 2006: 102*). Definition of P.M. Lyubchenko was created using the same approaches as the definition of V.V. Kravchenko and M.V. Pitsyk.

Professor O.V. Batanov talks about the "principles of local self-government", calling them "a valuable dimension of modern municipalism in Ukraine" (*Batanov, 2012: 88*), without defining them.

Also, the concept of "principles of local self-government" is used by O. O. Frolov. He emphasizes that "by their nature, the principles of local self-government belong to the sphere of legal ideology; it is a certain system of basic political and legal ideas of a conceptual nature relating to this subsystem of public power. The principles of local self-government seem to fulfill the role of a generalized reference point of municipal-legal ideology" (*Frolov, 2015: 165*). O.O. Frolov does not propose a definition of the concept of "principles of local self-government".

B.V. Kalinovsky in his thesis of for obtaining the scientific degree of candidate of legal sciences on the topic "Constitutional principles of local self-government in Ukraine", writes about "constitutional principles of local self-government". B.V. Kalinovsky analyzes this concept in relation to Ukraine, noting that "it is a system of fundamental origins and ideas determined by the nature of local self-government, which are fixed or derive from the content of the Constitution and laws of Ukraine and determine the organization and activity of the community, bodies that are being formed citizens and independently manage local affairs in the interests of the territorial community" (*Kalinovsky, 2004: 8*). Thus, he considers it expedient to focus attention not on the principles of local self-government as a whole, but only on the relevant constitutional principles.

### 3. The comparison attempts

Some researchers analyze various groups of principles related to the implementation of local self-government in the comparative perspective.

S.V. Malikov, in his research for obtaining a candidate of legal sciences degree on the topic "Principles of local self-government in Ukraine", formulated that "the principles of local self-government should be understood as the fundamental legal norms determined by its collectivistic nature, scientifically based, which reflect the principles and ideas of local democracy, underlying the organization and practical activity of the Ministry of Internal Affairs, its subjects and bodies, with the aim of solving issues of local importance in the relevant territory where the territorial community functions" (*Malikov, 2012: 44*). It is worth taking into account this thesis and continue familiarization with the analyzed work.

In addition, S.V. Malikov also talks about the "principles of municipal law" (for example, (*Malikov, 2012: 187*)). He does not define this concept, but it follows from the reasoning that the author placed in subsection 1.2 of his study. In particular, one should agree with the author's logic that "in the framework of constitutional (municipal) law, the principles of the Ministry of Internal Affairs, which have passed the stage of constitutional or legislative regulation and legalization, are mainly researched and considered. Their list is significantly narrower than the list of principles arising from doctrinal developments. But this list is characterized not only by legality, but also by direct legitimacy on the part of the state – adopting it at the level of the constitution and laws, the legislator determines and sets the normative parameters for the construction, existence and functioning of the Institute of the Ministry of Internal Affairs as a constitutional and legal institution" (*Malikov, 2012: 42*). Special attention to the distinction between the concepts of "principles of local self-government" and "principles of municipal law". S.V. Malikov does not talk about the "principles of municipalism", in general, the concept of "municipalism" is almost never used in his work.

Another example of comparative analysis can be found in the work of O.S. Orlovsky "Principles of modern Ukrainian municipalism: statement of the problem".

The well-known specialist in municipal law O.S. Orlovsky dedicated one of his scientific articles to the question of the relationship between the concepts of "principles of municipalism" (sometimes he calls them "principles of modern Ukrainian municipalism") and "principles of the local self-government".

Actually, O.S. Orlovsky talks about the "principles of legislation on local self-government in Ukraine" (*Orlovsky, 2012: 161*). At the same time, he refers to Article 4 "Basic Principles of Local Self-Government" of the Law "On Local Self-Government in Ukraine". O.S. Orlovsky explains the difference between the term used in his article ("principles of legislation on local self-government in Ukraine") and that used in the Law "On Local Self-Government in Ukraine" ("principles of local self-government"). Namely, he formulated that "it would be more correct to speak not about the principles of local self-government, but about the principles of legislation on local self-government. Such a difference exists not in all, but in many domestic normative acts – for example, the Law "On Citizenship of Ukraine" contains Art. 2 "Principles of Ukrainian legislation on citizenship" (*Orlovsky, 2012: 162*). It should be emphasized that this article is about the principles of local self-government, and not about the principles of legislation on local self-government. Therefore, it is unlikely that such an approach to the formulation of the name of these principles can be considered correct.

Continuing the analysis of the developments of O.S. Orlovsky, it is worth noting that the author clearly demonstrates the relationship between the "principles of local

self-government legislation" and "principles of municipalism" on the scheme included in his article. According to this scheme, the principles of local self-government legislation and the principles of municipalism mostly coincide with each other. But, at the same time, according to O.S. Orlovsky, there are those principles of municipalism that are not principles of legislation on local self-government. A similar situation occurs in the "reverse direction" – certain principles of legislation on local self-government are not principles of municipalism. In this part, the author's developments lack examples, this would increase the level of illustrativeness of the presented material.

O.S. Orlovsky added the following explanation to the schematic drawing: "those principles of municipalism, which are enshrined in the sources of law, are transformed into the principles of legislation on local self-government. On the other hand, the sources of law may also contain outdated principles that are no longer considered principles of municipalism" (*Orlovsky, 2012: 162*). It should be emphasized once again that for the scientific discourse on this issue there is a lack of examples of exactly which principles the author attributes to each of the three groups highlighted in the diagram (that is, which principles he considers to belong at the same time to the principles of legislation on local self-government and municipalism, which – only to principles of municipalism, which are only related to the principles of legislation on local self-government).

Based on the above theses of O.S. Orlovsky, how he characterizes the difference between isolated groups of principles will be useful. The author emphasizes that they have two main differences.

The first difference of O.S. Orlovsky considers that "the principles of legislation on local self-government will always have legal norms as the external form of their expression. The principles of municipalism can be established both in the sources of law and in doctrine" (*Orlovsky, 2012: 162*). This difference can be called formal.

The second difference, according to O.S. Orlovsky, consists in the fact that "the principles of legislation on local self-government should correspond to the current state of development of legal relations, and the principles of municipalism should also lay down prospects for development in the direction chosen at the state level" (*Orlovsky, 2012: 162*). It can be noted here that political and strategic issues of development are often fixed in legal acts – and therefore they can also lay the prospects for further development within the framework of municipal reform. Therefore, this criterion for distinguishing the principles of local self-government legislation and the principles of municipalism (principles of modern Ukrainian municipalism) is not clear. It has an indicative character.

#### **4. I.A. Galiakhmetov's approach to the principles related to the implementation of local self-government**

A well-known specialist in Ukrainian municipal law, I.A. Galiakhmetov paid considerable attention to the principles related to the implementation of local self-government.

First, in his writings, he applies the concept of "principles of municipal law" (*Galiakhmetov, 2011 (1): 101*). In his opinion, these principles should be divided into universal principles of municipal law and typological principles of municipal law. At the same time, the author emphasizes that universal principles of municipal law are nothing more than universal principles of law – "axiomatic concepts on which the legal system is built and functions" (*Galiakhmetov, 2011 (1): 102*). Among such principles, he distinguishes the principles of freedom, justice, equality, humanism, democracy, legality (*Galiakhmetov, 2011 (1): 102*).

Secondly, I.A. Galiakmetov distinguishes out the "principles of municipal law-making". In his opinion, with which we should fully agree, "municipal law-making activity is a process of constant improvement of the current law against the background of legal principles" (*Galiakmetov, 2011 (2): 53*). The author absolutely rightly and reasonably continues that "law-making activity should be based on the system of principles developed by legal policy and reveal the basic principles of regulation in the field of law-making of local self-government bodies" (*Galiakmetov, 2011 (2): 54*). After explaining the importance of distinguishing the principles of municipal law-making and proving their importance for the Ukrainian science of municipal law and practice, the author moves on to formulating proposals for the systematization of these principles.

The author formulated that "the principles of municipal rule-making are proposed to be divided into those that are an extrapolation of the general principles of law-making (rule of law, democracy, etc., humanism), and special ones that are specific to municipal rule-making (subsidiarity, combination of local and state interests, completeness of rule-making powers with issues of local importance)" (*Galiakmetov, 2011 (2): 57*). This classification should be taken into account for further research, but the main thing is to pay attention to the author's approach to the study of principles related to the implementation of local self-government.

According to this "scheme", that is, using this approach, the author considers other groups of principles. This approach should be supported in every possible way – not to focus attention on definitions, but instead to single out the main features of the studied group of principles, and on the basis of the analysis of those principles included in the group, to propose directions for their classification. At the same time, attention is drawn to the methodological and systematization accuracy with which I.A. Galiakmetov proposes classification groups – he is always the first to single out a general group covering general legal principles and/or other principles of a general nature.

This can be demonstrated in the following example.

Thirdly, I.A. Galiakmetov singles out the "principles of municipal legal management of economic activity in the communal sector of the economy" (*Galiakmetov, 2012: 154*). In his opinion, as a basis for distinguishing these principles, "principles of municipal legal regulation should be considered – these are more important guiding rules that must be followed by the organization, functioning and development of the system of municipal management of objects of communal property of the territorial community" (*Galiakmetov, 2012: 154*). Taking this into account, he offers the following list of principles of municipal legal management of economic activity in the communal sector of the economy: independence of solving local self-government issues; organizational identity of local self-government bodies in the state management system and interaction with state authorities in the implementation of general tasks and functions; compliance of material and financial resources with the authority of local self-government bodies; responsibility of local self-government bodies and officials to the population of the territorial community and business entities; diversity of organizational and legal forms of municipal management; observance of human and citizen rights and freedoms, observance of the rights of local self-government; legality in the organization and activities of local self-government bodies; publicity of the activities of local self-government bodies and officials, ensuring the openness and transparency of the activities of the subjects of power; collegiality in the activities of local self-government bodies, conscientious attitude to the performance of official duties, initiative and creativity in work; state guarantee of municipal legal administration" (*Galiakmetov, 2012: 155-156*). Thus, the author's approach to the study of principles related to the implementation of local self-government should be taken into account.

## 5. Conclusions

In the Ukrainian legal literature, there is a lack of monographic studies of the principles of local self-government, carried out in recent years. Despite the high scientific and practical relevance, such studies would contribute to terminological unification in the field of municipal axiology – for example, the works of Ukrainian authors refer to "principles of local self-government", "constitutional principles of local self-government", "principles of municipalism", "principles of modern of Ukrainian municipalism", others. Terminological unification will contribute to the improvement of the quality of both Ukrainian municipal legislation and the intensification of municipal legal research.

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