

## INNOVATION, WORK, SOCIETY

MUNICIPAL GOVERNANCE IN GERMANY:  
PRACTICE RECOMMENDATIONS FOR UKRAINE**Kateryna Akula**

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**Summary**

Establishing a municipal governance system is a long process focused on selecting the best practices that have proven to be effective and efficient. One of the methods is the transit of elements of municipal systems borrowed from other countries. The experience of ensuring democratic participation of the community formed in Germany is of interest. The purpose of the article is to identify the components of the German model of municipal governance that can be used by Ukraine to improve the efficiency of the national system of local self-government and bring it closer to EU standards. The elements of the comparative analysis in the article are the analysis of the institutional model of municipal governance and its state and political basis; determination of the specifics of the distribution of powers between the state and local governments and the nature of community participation in local self-government; characterization of the system of financial guarantees and the budget system; determination of the principles of cooperation and coordination of municipalities. The article uses the methodology of comparative analysis based on the identification and analysis of the legal, structural, organizational, political and economic components of municipal governance in Ukraine and Germany.

**Key words:** municipal law, model of local self-government, municipality, community, intermunicipal cooperation.

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**1. Introduction**

Germany has vast experience in establishing an effective system of municipal governance. Currently, there are about 11,000 municipalities in the country. The effective transit of management practices in the field of community engagement is based on the identification of common elements related to the public administration system, analysis of specific characteristics that allow us to conclude that the experience can be extrapolated to the Ukrainian reality. The relevant experience of the Federal Republic of Germany is used for comparative analysis. The expediency of choosing this particular state is due to its achievements in ensuring democratic participation of the community in municipal government. In addition, the model of combining traditional practices of municipal governance with the latest trends in the growth

of multiculturalism and multiethnicity of German communities is of interest. The experience of ensuring the economic efficiency of municipal units both in the context of municipalities of urban agglomerations and small settlements also needs to be studied. Ukraine is facing similar challenges today. In addition, we note some similar elements of the history of statehood formation, such as the experience of the country's territories being part of different states, the established traditions of community participation in solving local issues, and the desire to increase welfare and living standards.

The purpose of the article is to highlight the elements of German municipal governance that can be used by Ukraine to improve the efficiency of the national local government system and bring it closer to EU standards. Although Ukraine has a stable practice of ratifying international legal acts, the recommendations that the country receives from the Committee of Ministers of the Council of Europe contain positions of transformation that would bring the country closer to European standards and comments on their limited use.

To achieve this goal, the following scientific tasks should be solved: analysis of the institutional model of municipal governance and its state and political basis; determination of the specifics of the distribution of powers between the State and local self-government bodies and institutional forms of community participation in local self-government; characterization of the system of financial guarantees and the budget system; determination of the principles of cooperation and coordination of municipalities. The article uses the methodology of comparative analysis based on the identification and analysis of legal, structural, organizational, political and economic components of municipal governance in Ukraine and Germany.

## 2. Main text

The peculiarity of the EU, of which Germany is a member, is the coexistence of different models of local self-government in the countries. In the scientific literature, the institutional model of Germany is defined as a mixed (combined) model based on the coexistence of several forms of local government organization determined by historical traditions and the community itself. The guaranteed right to local self-government in the country is combined with the financial responsibility of the municipal authorities of the community, which ensures its viability and development. Municipalities in Germany are supervised by the federal states and are part of their governance system. The activities of municipal authorities are regulated by the bylaws of the respective federal state, which clearly define the tasks of municipalities. The country's peculiarity is the division of municipal tasks into mandatory ones (passport services, urban planning, water management, etc.) and so-called voluntary ones, which municipalities perform at their own discretion, based on their own financial capabilities: culture, sports, local development, etc. (*Country specifics: local government structures – Germany, 2023*).

In our opinion, such a distribution of legally binding obligations has the potential to be used effectively in Ukraine: clearly defined areas of priority status reduce the number of public discussions about budget spending and allow key areas to be properly funded to a certain extent.

In the scientific literature, when considering institutional models of local self-government, Ukraine and post-Soviet countries are referred to as examples of the continental system (sometimes a modification of the French system), which is based on a combination of elements of election and state control. According to N. Kondratska, on the one hand, this model is inherent in countries that have traditions of centralization of power and are based on the election of representative and executive bodies of local self-government, and on the other hand,

it provides for the appointment of representatives of the «center» (*Kondratska, 2015: 259*). Local self-government in the continental model is to a certain extent dependent on the state authorities, although at the grassroots level, only territorial community bodies function.

The countries have different approaches to unifying their municipal governance systems. Local self-government in Germany has a long history. The system was greatly influenced by the reforms in Germany during the Napoleonic era. Since, due to the specifics of historical development, the regulation of local self-government in the country was within the competence of several countries, differences in legislation and traditions are perceived as natural and commonplace. According to D. Schefold, in 1935 the Nazi government attempted to unify the system of local government, but after 1945 each Länder restored its own codes and traditions (*Schefold, 2012: 233–234*). Changes also occurred after 1990 and were related to the reunification of the country. Differences in traditions and historical experience have led to the fact that the country has both two- and three-tiered structures of government. Local self-government includes districts as the highest level and municipalities as the basic level. Large cities also have the status of municipalities. On the one hand, municipalities, in accordance with the Basic Law, play the role of the closest level of government to the citizen, and on the other hand, they are responsible for tasks delegated to them by the federal state of which they are a part.

As for Ukraine, its withdrawal from the USSR and declaration of independence were steps towards the next stage of community involvement in municipal governance: a transition to a new system of government, local self-government, and legal support for municipal governance. O. Maidannyk notes that Ukraine is characterized by a certain dualism: in the transition from the Soviet system, it did not clearly define the theoretical foundations of the new form of organization of government and local self-government: in 1990, preference was given to the state theory of local self-government (The Law of Ukraine «On Local Councils of People's Deputies and Local Self-government»), and in 1992 – to the community theory (The Law of Ukraine «On Local Councils of People's Deputies, Local and Regional Self-government»), and in 1994 Ukraine returned to the state theory. This uncertainty led to the fact that in some respects the Ukrainian model only partially complied with the provisions of the European Charter of Local Self-government.

The systemic changes associated with decentralization, which began with the adoption of the Concept of Reforming Local Self-government and Territorial Organization of Power, approved by the Cabinet of Ministers of Ukraine on April 1, 2014, are considered a separate stage of systemic changes in the recent history of Ukraine, which meant a new form of relations between the center and the regions, the creation of favorable conditions for the development of communities and the transfer of some powers to them.

I. Korzh states that the new legislative framework has significantly strengthened the trend towards municipal consolidation, the establishment of new and changes in previous municipal relations aimed at solving urgent problems. In particular, municipal consolidation has manifested itself through the creation of new territorial and amalgamated territorial communities; expansion of intermunicipal and international cooperation; and an increase in the list of entities that fill local budgets (*Korzh, 2018: 13–14*).

In contrast to the above position, O. Batanov notes that local self-government in Ukraine combines the properties of municipal self-governing collectives, but at the same time allows for the possibility of legal and administrative interference in its activities, which contradicts the principles and international standards of local self-government (*Batanov, 2014: 69*). While agreeing that Ukrainian legislation contains certain inconsistencies and contradictions, we note that the establishment of the classically recognized institutional models of local self-government

and municipal administration in Germany is the result of a long development, sometimes reaching back centuries, while Ukraine has only begun this path since the early 1990s, so expectations of rapid institutional change are more an aspiration than a reflection of the objective course of transformation processes.

The concept of autonomy is common to both countries. M. Pitrova notes that all municipalities in Germany have the same level of autonomy, although they differ in their area, number of inhabitants, financial system capacity, etc. H. Fuhr, J. Fleischer, and S. Kuhlmann distinguish the following types of autonomy in the German municipal administration system: organizational, personnel, planning, statutory, fiscal, and territorial (*Fuhr, Fleischer, Kuhlmann, 2018*).

As for the principles underlying the municipal governance system, the leading principle of both Germany and the EU, also enshrined in the *Treaty on European Union (Treaty on European Union, 2012)*, is the principle of subsidiarity, which is based on the absence of administrative violence, decision-making at the level of government closest to the citizen, and the achievement of well-being through the involvement of the population in public affairs. The principle of subsidiarity is based on the assumption that the functions of the government are determined by its ability to effectively address certain issues and can be transferred to other governing bodies only when a particular body is unable to solve it (*Evans and Zimmermann, 2016*).

M. Zeller-Winkler identifies three key principles contained in the German law on administrative procedure: first, the principle of legality and the rule of law, which ensures its priority and does not allow interference with the rights of third parties without legal authority; second, the principle of equal treatment and non-discrimination. The third principle is the use of proper discretion in decision-making (*The importance of a Law on Administrative Procedure for citizens in general and for local self-government in particular, based on the German example, 2023*).

The Law of Ukraine «On Local Self-government in Ukraine» contains a list of principles, including the following: legality, transparency, collegiality, combination of local and state interests, independence, accountability, state support, etc. (*The Law of Ukraine «On Local Self-government in Ukraine», 1997*). The principles enshrined in the legislation of Germany and Ukraine determine different legal regimes of municipal governance. In Germany, they are about ensuring democratic access (non-discrimination) and autonomous decision-making (the principle of proper discretion) and apply to the activities of public authorities in general. In Ukraine, the rule of law principle (legality, judicial protection, legal independence) is primarily aimed at subordinating local governments to the state in accordance with the continental model of local governance.

German municipal practice implements the fundamental principles of the European Charter of Local Self-government to the fullest extent possible. As D. Schefold notes, Germany was one of the first countries to ratify the European Charter of Local Self-government by federal law of January 22, 1987. Disputes among experts are caused by the fact that the Charter concerns local authorities, so its ratification should have included prior approval by the Länder, and not immediately adopted as a federal law, which caused long-lasting disputes in the country's expert community. At the same time, the fact that it is one of the basic documents for the country is not disputed (*Schefold, 2012: 235–236*).

In Ukraine, the European Charter of Local Self-government was ratified 10 years later – on July 17, 1997 (entry into force: January 01, 1998). However, as noted by N. Chudyk and M. Mudrak, Ukraine has not developed a mechanism for implementing the requirements of international documents. While according to the principles of European law, international documents take precedence over national ones (*Chudyk, Mudrak, 2023: 149*). In Germany, this means that the state cannot adopt regulations that contradict the norms of European law.

The constitutions of both Germany and Ukraine contain guarantees of municipal governance as a democratic form of community participation in the public administration life of the country. In particular, art. 28 of Basic Law stipulates that in each state, district, municipality, community members must be represented by an appropriate body formed by general elections (*Basic Law for the Federal Republic of Germany, 2022*). A provision that differs from Ukrainian law is the right to elect and be elected to municipal governance bodies for persons who have the citizenship of any country of the European Union. EU citizens participate in municipal elections on the same basis as citizens. The procedure for participating in local elections is determined by Council Directive 94/80/EC of December 19, 1994, laying down detailed conditions for the exercise of the right to vote and to stand as candidates in municipal elections by citizens of the Union residing in a Member State of which they are not citizens, as well as by the national legislation of the country where such citizens reside (*Council Directive 94/80/EC, 1994*).

In the last two years in Ukraine, according to the Decree of the President of Ukraine «On the introduction of martial law in Ukraine», in accordance with the current legislation, certain constitutional rights and freedoms have been restricted during the period of martial law, including the right to participate in the management of state processes, referendums, elections of officials of state and local authorities, meetings and demonstrations, the holding of which was notified in advance by the authorities or local self-government (articles 38, 39 of the Constitution of Ukraine) (*Decree of the President of Ukraine «On the introduction of martial law in Ukraine», 2022*).

In terms of national legislation, Article 5 of the Constitution of Ukraine proclaims the people as «the sole bearer of sovereignty and source of power» exercised «directly and through state and local authorities», while article 7 guarantees local self-government (*Constitution of Ukraine, 1996*). Article 140 of the Constitution defines a territorial community, the realization of its right to self-government and the formation of councils by residents of settlements to independently resolve issues within the current legal framework. The right of EU citizens to participate in local self-government remains unresolved. The norms of mandatory naturalization of foreigners, including EU citizens, remain in force, which limits their opportunities and, in our opinion, impoverishes the social potential for change.

German law uses the concept of city-states, which have federal status. These include Berlin, Hamburg and Bremen. Each of these cities is both a federal state and a municipality. City-states are endowed with both state and municipal powers, combining elements of the centralized system and local self-government. The powers and responsibilities are balanced on the principles of importance and efficiency (*Structural operation of local and regional democracy. Germany, 1998*). Ukraine, like Germany, also has a similar practice of cities with special status, which include Kyiv and Sevastopol. The status of Kyiv is defined in the Law of Ukraine «On the Capital of Ukraine – the Hero City of Kyiv». The peculiarity of the city's management system is that one body (Kyiv City State Administration) is vested with the functions of state and local executive power. A separate law on the status of Sevastopol was not adopted. No mayoral elections were held in the city, and the President of Ukraine appointed the head of the Sevastopol City State Administration, who performed these functions.

Thus, the existence of cities with special status is common to both countries. In both Germany and Ukraine, the functions of state administration and local self-government in such cities are concentrated in one body. As part of this practice, there is a need to harmonize the content of legal acts in order to prevent legal conflicts. For example, A. Frantsuz emphasizes some controversial aspects of the introduction of martial law in Kyiv, since according to the current legislation, the model of local self-government for the capital provides for a special

procedure for the functioning of municipal governments: Kyiv has both a local council and a local administration, which causes certain contradictions that require additional legislative regulation (*Frantsuz, 2023: 49*).

The system of financial guarantees for local governments in Germany and Ukraine has many similarities. The Basic Law of Germany guarantees local self-government financial autonomy, which is realized through the right of municipalities to tax, but also establishes their financial responsibility for the disposal of funds (*Schefold, 2012: 235–236*). Article 142 of the Constitution of Ukraine defines property (movable and immovable), local budget revenues, and natural resources as the basis of local self-government, and states that the state also participates in the formation of local budget revenues and financially supports local self-government (*Constitution of Ukraine, 1996*).

At the same time, the principles of local budgeting and budget systems differ. Ukraine has a 2-level system. Germany has a 3-level system, consisting of the federal budget, the land and community budgets. T. Zhuravleva and D. Zhybulyakova emphasize that Germany equalizes the budgets of the federal subjects by distributing 25% of VAT and federal grants to the territories. Each federal entity has its own methodology for redistributing funding, which is based on the needs of individual municipalities and taking into account the specifics of the regional economic system (*Zhuravleva, Zhybuliaka, 2017: 12*).

The two-tiered Ukrainian system consists of the state budget and local budgets, which together form the budget of Ukraine. Common to both countries is the use of methods to avoid double counting of funds. The model of financial equalization of community budgets can also be used in Ukraine to reduce economic differentiation between regions and narrow the economic gap in living standards. An additional difference between the budget systems is caused by the fact that Germany is a member of the EU and has additional obligations to finance the EU's anti-crisis funds.

According to V. Dudchenko, the progressive taxation scale adopted in the country keeps the financial system from increasing tax burden even in times of crises and high inflation. At the same time, Ukraine abandoned the progressive system in 2004 and introduced a unified taxation scale that is not tied to the level of income (*Dudchenko, 2013*).

Cooperation and coordination of municipalities in Germany is facilitated by the Association of German Cities, the German County Association, and the Association of Towns and Municipalities. These associations represent the interests of municipalities in their relations with the federal government and the European Union. In Ukraine, as of 2024, there are the All-Ukrainian Association of Communities and the All-Ukrainian Association of Amalgamated Territorial Communities, which address issues of experience exchange, dissemination of effective practices, interaction with the authorities, etc. Another mandatory component of inter-municipal cooperation in Germany is the participation of small businesses through involvement in local development projects, targeted cooperatives and associations (in the field of waste recycling, organization of recreational areas, preservation of cultural heritage, etc.) The practice of organizing cooperation between community associations and Ukrainian entrepreneurs to implement transformational projects may be useful for Ukraine. In particular, in November 2023, Leipzig hosted the VI Conference of the Ukrainian-German Municipal Partnership in the field of modernization of the country's infrastructure and post-war reconstruction of destroyed areas.



### 3. Conclusions

The comparative analysis of municipal governance systems in Germany and Ukraine has revealed effective practices that can be used to improve the national system: 1) the issue of using the provisions of international documents ratified by Ukraine in national practice. This issue can be resolved by introducing a provision on the non-contradiction of new legislative acts with the provisions of international acts. Despite the fact that international law takes precedence over national legislation, in Ukraine, when resolving disputes, the provisions of national legal acts are the basis for resolving them; 2) resolving the issue of participation of EU citizens in local self-government at the basic level (in accordance with EU Council Directive 94/80/EC and local legislation). Currently, only Ukrainian citizens have full political rights, but it is possible to use a provision that allows foreigners to participate if they meet the criteria established by the state or community (residence in the community for a certain period of time, ownership of property, payment of taxes, etc.); 3) transformation of the tax system: returning to national practice a progressive taxation system and using mechanisms of state redistribution of tax revenues, which will equalize the level of economic well-being of the population.

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