

THE INFLUENCE OF EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT ON THE DEVELOPMENT OF UKRAINIAN MUNICIPAL LAW

Ruslana Zhovnovach

Doctor of Economic Sciences, Professor, Head of the Department of Economic Theory, Marketing and Economic Cybernetics, Central Ukrainian National Technical University, Ukraine
e-mail: ruslanaz1977@gmail.com, orcid.org/0000-0001-6758-3421

Yuri Bondarchuk

Candidate of Historical Sciences, Associate Professor at the Department of Economic Theory, Marketing and Economic Cybernetics, Central Ukrainian National Technical University, Ukraine
e-mail: Yurabon71@gmail.com, orcid.org/0000-0001-5744-9237

Summary

Ukrainian State has made its historic choice in favor of European integration. The basic European values, of course, include developed local self-government, recognized and guaranteed by the state authorities. The European Charter of Local Self-Government has been the main European standard to which Ukraine has committed itself to recognizing and complying in recent decades.

The European Charter of Local Self-Government, adopted by the Council of Europe on 15 October 1985 as a result of many years of work by various European bodies, remains as the main international legal document which sets standards for the organization of local government on the basis of local self-government.

Theoretical views on legal nature of the European Charter of Local Self-Government from the standpoint of various branches of law are summarized, legal problems of the Charter implementation are identified and ways to overcome them are outlined. Level of municipal, administrative and legal culture, can be used for further research in this area and for educational purposes by pupils, students, local government officials, civil servants, deputies of local councils.

Based on the sources and scientific literature we have studied, it can be argued that the European Charter has a multifaceted legal nature and is the subject of research by scholars in international, constitutional and municipal law which identifies national models of local self-government of the states that ratified it. For Ukraine, the Charter is a vector of further transformations of the local government system in the direction of building capable local self-government.

Keywords: Council of Europe, international law, territorial community, civil society.

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1. Introduction

Urgency of the research Ukrainian State has made its historic choice in favor of European integration, promoting the establishment of European values and European identity of Ukraine, creating the necessary conditions for growth and realization of its potential. The basic European

values, of course, include developed local self-government, recognized and guaranteed by the state authorities. Despite the existence of many international legal instruments regulating the field of local self-government, the European Charter of Local Self-Government has remained the main European standard to which Ukraine has committed itself to be recognized and complied with in recent decades.

After ratification of the Charter by Ukraine, much has been done in the direction of its implementation and implementation, in particular, a large-scale development of local self-government has begun, which continues to this day. Today, decentralization, reform of the administrative-territorial system and local self-government is one of the key areas of systemic social transformation in Ukraine, the implementation of which is impossible without the involvement of relevant research.

Study purposes: to study the historical preconditions for the adoption and implementation of the European Charter of Local Self-Government of Ukraine, based on the analysis of current legislation and practical problems of its implementation to develop proposals aimed at improving the legal regulation of local self-government in Ukraine.

To perform this work, the following **tasks** were set:

- to study the historical background of the European Charter of Local Self-Government and its legal nature;
- to generalize the scientific literature of domestic and foreign authors studying the influence of the Charter on the theory of municipal law;
- to analyze the content of the European Charter of Local Self-Government and the legislative acts of Ukraine adopted for its implementation;

Research method. The following methods were used in the study:

- system-structural – analysis of the structure and provisions of the European Charter of Local Self-Government; historical – study of the history of the European Charter of Local Self-Government, signing and ratification by European countries; generalization and synthesis – study of the legal nature of the European Charter of Local Self-Government; statistical – research by interviewing a group of officials and a group of deputies of local councils awareness of the provisions of the Charter and its use in their practice.

Theoretical and practical significance of the work: theoretical views on the legal nature of the European Charter of Local Self-Government from the standpoint of various branches of law are identified, legal problems of implementation of the Charter are identified and ways to overcome them are outlined, level of municipal, administrative and legal culture, and can also be used for further research in this area and for practical application by local government officials, civil servants, deputies of local councils.

2. Structure and content of the European Charter of Local Self-Government

Structure of European Charter of Local Self-Government consists of a Preamble, three Parts, which combine 18 Articles.

The Preamble to Charter states, in particular, that member States of the Council of Europe which have signed the Charter, considering that the aim of the Council of Europe is to achieve greater unity between its members. With due regard to that one of the methods of achieving this objective is the conclusion of agreements in the administrative area. In the context of that local self-government is one of the main foundations of any democratic regime, we have agreed on the following (*Khartiia, 2009*) – the following is a summary of Article 1 of the Charter on the obligations of the parties. Thus, the Preamble of the Charter defines the fundamental Principles

of local self-government as an important institution of a democratic society, the integration goal of the Charter and the method of achieving it – the conclusion of the Agreement.

The first Part of the Charter covers 10 Articles (from 2 to 11 inclusive) and contains important provisions on the autonomy of the institution of local self-government. The principle of local government is recognized in national legislation and in the Constitution (Article 2). According to Article 3 of the Charter, local self-government means the right and ability of local self-government bodies within the law to regulate and manage a significant share of public affairs, under their own responsibility, in the interests of the local population. This right is exercised by councils or assemblies, the members of which are elected by secret ballot on the basis of direct, equal, universal suffrage and which may have executive bodies accountable to them. This provision in no way precludes the use of citizens' assemblies, referendums or any other form of direct citizen participation, if permitted by law.

Article 4 of the Charter outlines the scope of competence of local self-government and establishes the principle of subsidiarity, in particular, it states that the main powers and functions of local self-government are determined by the constitution or law. Within the framework of the law, local self-government bodies have the full right to freely resolve any issue that is not excluded from the scope of their competence and the resolution of which is not entrusted to any other body. Public authority is usually exercised mainly by those public authorities that have the closest contact with the citizen. In the process of planning and decision-making on all issues directly related to local self-government bodies, the latter should be consulted, as soon as possible and in an appropriate manner.

Article 5 of Charter implements Principle of territorial boundaries protection of local self-government and states that changes in the territorial boundaries of local self-government bodies cannot be carried out without prior opinion of the relevant local communities, possibly by referendum if permitted by law.

Without prejudice to more general legislation, local governments should be able to define their own internal administrative structures, taking into account local needs and the need to ensure effective governance. Conditions of service of employees of local governments should allow the selection of highly qualified personnel, taking into account personal qualities and competencies; for this purpose, appropriate opportunities for professional training, remuneration and promotion are provided (Article 6 of the Charter), thus consolidating the organizational, legal and personnel bases of local self-government.

An article 7, 8 of Charter establishes fundamentally important guarantees of local self-government in the exercise of the powers of elected representatives, as well as in the administrative supervision of the activities of local self-government bodies. The conditions of activity of local elected representatives must ensure the free performance of their functions, provide for appropriate financial reimbursement of expenses incurred in this activity, reimbursement of lost income or remuneration for work performed, appropriate protection of social security. Any functions and activities that are incompatible with the mandate of the local representative are determined by law or fundamental legal principles.

Article 9 of the Charter establishes the financial basis of local self-government and establishes, in particular, that local self-government bodies have the right within the area of national economic policy to their own adequate financial resources, which they can freely dispose of within their powers. Article 10 of Charter enshrines the right of local governments to freedom of association with other local governments, including other states, and Article 11 – establishes guarantees of legal protection to ensure the free exercise of their powers.

Part II “Other Provisions” consists of three articles (Articles 12, 13, 14) and contains provisions on the obligations of states that have ratified the Charter, the right of states to determine the categories of local or regional self-government bodies with which it intends to limit application of the Charter or which it intends to withdraw from it. States are also required to provide the Secretary General of the Council of Europe with all relevant information concerning legislation or other measures taken by it to comply with the provisions of this Charter.

Part III of Charter deals with the procedural issues of its signing, ratification and entry into force (Article 15), its territorial application (Article 16), denunciation (Article 17), and notification (Article 18) on actions with the Charter.

Thus, the European Charter of Local Self-Government is a small document in its scope, but its content and significance for European states, the process of European integration and ensuring the progressive development of the institution of local self-government is difficult to overestimate. Most of its norms are norms-principles of universal character, which can be flexibly adapted to national legal systems, taking into account the diversity of their models of local self-government. The legal technique of the European Charter of Local Self-Government also deserves the highest praise, in particular, the presentation of legal norms is characterized by clarity, accuracy, compactness and so on.

3. The value of the European Charter of Local Self-Government for the development of local self-government in Ukraine

Ukraine’s ratification of the European Charter of Local Self-Government has become a landmark event in the development of local self-government as an important institution of civil society, contributed to its democratization, helping to rid of outdated Soviet pseudo-self-governing forms of activity of bodies and officials, institutionalization of new legal forms and methods of work, as well as changes in understanding the essence of local self-government in the minds of citizens.

First of all, it should be noted that after the signing of the European Charter of Local Self-Government on behalf of Ukraine, the Constitutional Law of Ukraine “On Local Self-Government in Ukraine” of 21 May 1997 № 280/97-BP (*Pro mistseve samovriaduvannia, 1997*) was adopted, which initiated the reform of this institution in the light of the principles set out in the Charter. In accordance with the Constitution of Ukraine, this Law defines the system and guarantees of local self-government in Ukraine, the principles of organization and activity, the legal status and responsibilities of bodies and officials of local self-government. Article 2 of this Law defines local self-government as a state-guaranteed right and real ability of a territorial community – villagers or voluntary association of residents of several villages, settlements, cities – independently or under the responsibility of local government bodies and officials to decide local issues within the limits of the Constitution and laws of Ukraine. Local self-government is carried out by territorial communities of villages, settlements, cities both directly and through village, settlement, city councils and their executive bodies, as well as through district and regional councils representing common interests of territorial communities of villages, settlements and cities.

The fixing of the status of the primary subject of local self-government, the main bearer of its functions and powers for the territorial community of the village, settlement, city has become an important innovation of this law. The introduction of the principle of separation of powers in Art. 10 of this Law was an important innovation, according to which representative bodies of local self-government (councils), village, settlement, city mayors, executive bodies

of local self-government act on the principle of division of powers in the manner and within the limits prescribed by law. The procedure for forming and organizing the activities of councils is determined by the Constitution, Laws of Ukraine, as well as the statutes of territorial communities.

The establishment by this Law of guarantees of local self-government, its bodies and officials, which correlates with Art. 4, 7, 8 of the European Charter of Local Self-Government was really important. According to Art. 71 of the Law of Ukraine “On Local Self-Government in Ukraine” territorial communities, bodies and officials of local self-government independently exercise their powers. Bodies of executive power, their officials have no right to interfere in the activities of bodies and officials of local self-government, as well as to resolve issues referred by the Constitution and Laws of Ukraine to the powers of bodies and officials of local self-government, except in cases of powers delegated to them, provided by law. If the local state administration considers issues that affect the interests of local self-government, it must notify the relevant authorities, which in turn have the right to apply to the court to declare illegal acts of local authorities, local governments, enterprises, institutions and organizations that restrict rights of territorial communities, powers of bodies, officials of local self-government.

The institutionalization of service in local self-government as an independent type of public service due to the adoption of June 7, 2001 Law of Ukraine “On Service in Local Self-Government” (*Pro sluzhbu, 2001*) was an important step towards further development of local self-government in Ukraine after the ratification of the Charter. Before the adoption of this Law, the Law of Ukraine “On Civil Service” in force at that time extended its effect to local government officials, which did not take into account either the peculiarities of the activities of local government officials or the specifics of their service, which did not contribute to the involvement of highly qualified personnel in this type of service, as provided for in Art. 6 of the European Charter of Local Self-Government. As K. Solyannik rightly points out, the development of local self-government of our state directly depends on the resource provision of its components. The Law of Ukraine “On Service in Local Self-Government Bodies” established mandatory rules of conduct for the bodies of the territorial community to implement their organizational method of working with staff. National mechanisms for the selection, placement, education, training of local government officials should be used as a single standard throughout the country. Based on this, some communities improve procedures, forms and methods of work, solving the problem of providing government agencies with professional staff (*Solyannik, 2006: 80, 81*). Another important milestone in the process of reforming the institution of local self-government in Ukraine was the adoption of the Law of Ukraine “On the Status of Deputies of Local Councils” of July 11, 2002 (*Pro status deputativ, 2002*), which defined the legal status of deputy as a representative of the interests of the territorial community, voters of his constituency and an equal member of the local council, establishes guarantees of deputy activity and the procedure for recalling a deputy of the local council. In pursuance of Art. 7 of the Charter, this Law also enshrines the incompatibility of the status of a local council deputy with certain positions and activities, his rights and responsibilities, sessional and non-sessional forms of work of a local council deputy in the council and its bodies, as well as providing conditions for labor and other rights.

Full-fledged local self-government as a management system cannot effectively address issues of local importance without adequate provision of financial resources that guarantee the independence of local budgets. In this regard, the Verkhovna Rada of Ukraine on June 21, 2001 adopted the first version of the Budget Code of Ukraine (*Biudzhetniyi, 2010*), which defined the principles of the budget system of Ukraine, its structure, principles, legal framework,

basics of budget process and intergovernmental relations and liability for violations budget legislation. For the first time in the history of Ukraine, a single codified legal act was adopted, which regulated budgetary relations, including in local self-government, as a separate third section of the Budget Code was devoted to local budgets, including their structure, revenue and expenditure, development budget, process preparation, consideration, approval, implementation and reporting on local budgets, as well as inter-budgetary relations between the state and local government, the division of expenditures between budgets. Later, many changes and additions were made to the Budget Code aimed at its improvement and further budget decentralization.

The adoption of such an important legal act for local self-government as the Tax Code of Ukraine (*Tax, 2010*), which regulates relations arising in the field of taxes and fees, including local ones, which are established and abolished by decisions of city councils and councils of united territorial communities cannot be ignored. According to Art. 8 of the Tax Code, local taxes and fees are established in accordance with the list and within the limits of rates set by the Tax Code of Ukraine, decisions of village, town, city councils and councils of united territorial communities, established in accordance with law and long-term plan formation of communities, within their powers and are mandatory for payment on the territory of the respective territorial communities. Local taxes include the property tax and the single tax, and local fees include the parking fee and the tourist tax, which are fully received by the relevant local budgets and used to support the livelihoods of communities.

Reforming the administrative-territorial structure of Ukraine, the process of decentralization of power on the ground, the formation of capable and self-sufficient communities as the starting point of the territorial management system launched on February 5, 2015 Law of Ukraine “On Voluntary Association of Territorial Communities” (*Pro dobrovilne, 2015*). arising in the process of voluntary association of territorial communities, as well as voluntary accession to the united territorial communities.

A significant number of bylaws have been adopted to implement the above-mentioned legislative acts, which are also important sources of modern municipal law.

As U. Todyk and M. Voronov rightly noted, the significance of the Charter for the development of local self-government and municipal law in Ukraine is as follows:

a) the Charter generalizes the European experience, which can be fruitfully used in Ukraine;

b) The Charter emphasizes the role of local self-government in governing the state and society, in ensuring stability in society, in involving citizens in solving local problems;

c) The Charter establishes the principles of organization of local government for Ukraine as a member of the Council of Europe, ie municipalities have received in addition to state guarantees of their rights and international guarantees;

d) The Charter is a document that reflects the values of constitutionalism that unite the peoples of European states. Thus, the Charter gives impetus to the development of local democracy in Ukraine, the search for the most optimal and effective forms of local self-government, taking into account the best European experience (*Todyky, 2004: 245*).

4. Conclusions

As a result we came to the conclusion that in the process of European integration one of the important European values is developed local self-government, which is the most optimal management system close to the population, which has the flexibility to adapt to many local issues.

The European Charter of Local Self-Government, adopted by the Council of Europe on 15 October 1985 as a result of many years of work by various European bodies, remains the main international legal document setting standards for the organization of local government on the basis of local self-government.

The European Charter of Local Self-Government was signed on behalf of Ukraine on 6 November 1996 in Strasbourg and ratified by the Verkhovna Rada of Ukraine on 15 July 1997, unlike in many European countries, without any reservations. At present, due to various, mainly political, reasons, the process of implementing the European Charter of Local Self-Government and harmonizing it with national legislation remains incomplete and requires the state to focus its efforts on fulfilling its commitments in full.

Based on the sources and scientific literature we have studied, we can state that the European Charter has a multifaceted legal nature and is the subject of research by scholars in the fields of international, constitutional and municipal law. According to its essential characteristics, the European Charter of Local Self-Government is an international standard in this field, which defines the national models of local self-government of the states that have ratified it. For Ukraine, the Charter is a vector of further transformations of the local government system in the direction of building capable local self-government.

In its legal form, the European Charter of Local Self-Government is a multilateral political international treaty of the European region and an international treaty concluded by the Ukrainian state, which in turn is a part of the national legislation of Ukraine. Recognition of the primacy of international law over domestic law obliges Ukraine to bring its national legislation in line with the standards set out in the Charter.

After the signing of the Charter, a number of important municipal laws and bylaws of Ukraine aimed at implementing the principles of the Charter were adopted. However, the measures taken are not entirely sufficient, as many important issues of municipal activity, which are not fully in line with the principles of the European Charter, remain unresolved today. Among them: introduction of own executive bodies of rayon and oblast councils and determination of their powers, amendments to land legislation to expand the competence of village and settlement councils on land management outside settlements and approval of monetary valuation of relevant land plots, adoption of a new version of the Law of Ukraine “On service in local self-government bodies”, adoption of legislation on local referendums, implementation of organizational measures to improve the skills of employees and deputies of local councils on knowledge of the principles of European standards of local democracy.

References

1. Council of Europe (2009). *Yevropeiska Khartiia mistsevoho samovriaduvannia [European Charter of Local Self-Government]*. Retrieved from: http://zakon.rada.gov.ua/laws/show/994_036 [in Ukrainian].
2. Solyannik K.E. (2006). *Sluzhba v orhanakh mistsevoho samovriaduvannia: problemy pravovoho rehuliuvannia [Service in local self-government: problems of legal regulation]*. *Problemy zakonnosti*. Vol. 83. pp. 80–86. [in Ukrainian].
3. The Verkhovna Rada of Ukraine (1997). *Zakon Ukrainy “Pro mistseve samovriaduvannia v Ukraini” [Law of Ukraine “On local self-government in Ukraine”]*. Retrieved from: <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80> [in Ukrainian].

4. The Verkhovna Rada of Ukraine (2001). Zakon Ukrainy "Pro sluzhbu v orhanakh mistsevoho samovriaduvannia" [Law of Ukraine "On Service in Local Self-Government Bodies"]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/2493-14> [in Ukrainian].
5. The Verkhovna Rada of Ukraine (2002). Zakon Ukrainy "Pro status deputativ mistsevyykh rad" [Law of Ukraine "On the status of deputies of local councils"]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/93-15> [in Ukrainian].
6. The Verkhovna Rada of Ukraine (2010). Biudzhetni kodeks Ukrainy [Budget Code of Ukraine]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/2542-14> [in Ukrainian].
7. The Verkhovna Rada of Ukraine (2010). Podatkovi kodeks Ukrainy [Tax Code of Ukraine]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/2755-17> [in Ukrainian].
8. The Verkhovna Rada of Ukraine (2015). Zakon Ukrainy "Pro dobrovilne obiednannia terytorialnykh hromad" [Law of Ukraine "On voluntary association of territorial communities"]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/157-19> [in Ukrainian].
9. Todyky Yu. M., Shumilkina V. A. (Eds.). (2004). Mistseve samovriaduvannia v umovakh stanovlennia pravovoi derzhavy [Local self-government in the conditions for the formation of the rule of law]. Kharkiv: TOV "Odissei" [in Ukrainian].