

GUARANTEES OF LOCAL GOVERNMENT IN UKRAINE

ГАРАНТІЇ МІСЦЕВОГО САМОВРЯДУВАННЯ В УКРАЇНІ

The guarantees of local government are the conditions and events that carry the possibility of realization and protection of local government. The guarantees of local government can be classified on various grounds: the territory of action, the essence etc. One of the major classifications of the guarantees of local government is their classification on general and special. The general guarantees of local government are the main conditions for the existence of a democratic society, without which the local government is impossible. The general guarantees of local government are political, economic and cultural. The special guarantees of local government are legal guarantees.

Key words: *guarantees of local government, local government, independence of local government, general guarantees of local governments, special guarantees of local governments.*

Муніципальна реформа, що триває в Україні, впровадила у повсякденне життя багато нових підходів, ідей та напрацювань. Активно дискутується проблематика децентралізації публічної влади, практична імплементація принципу субсидіарності тощо. При цьому важливо, щоб реформи здійснювалися виважено і не погіршували існуючі досягнення у сфері місцевого самоврядування, набуті за роки незалежності. У зв'язку з цим важливою практичною задачею є постійна орієнтація на гарантії місцевого самоврядування при проведенні нормопроектних робіт. Відповідно, важливим теоре-

тичним завданням є доктринальні розробки у цій сфері. Гарантії місцевого самоврядування – це умови та заходи, що здійснюють можливість реалізації та захисту місцевого самоврядування. Гарантії місцевого самоврядування можуть бути класифіковані за різними підставами: за територію дії, за змістом тощо. Однією з найважливіших класифікацій гарантії місцевого самоврядування є їхній поділ на загальні та спеціальні. Загальні гарантії місцевого самоврядування представляють собою основні умови існування демократичного суспільства, без яких місцеве самоврядування є неможливим. До загальних гарантії належать політичні, економічні та культурні. Спеціальними гарантіями є юридичні гарантії. Спеціальні (юридичні) гарантії місцевого самоврядування можна класифікувати на матеріальні (пов'язані з наявністю правових норм, що визначають конкретні права, обов'язки і заборони, встановлюють юридичну відповідальність за правопорушення), інституціональні (закріплення у законодавстві системи органів публічної влади, які покликані захищати і забезпечувати права і свободи) та процесуальні, що визначають порядок реалізації прав і свобод та діяльності органів і посадових осіб місцевого самоврядування.

Ключові слова: *гарантії місцевого самоврядування, місцеве самоврядування, незалежність місцевого самоврядування, загальні гарантії місцевого самоврядування, спеціальні гарантії місцевого самоврядування.*

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Relevance of the research. The municipal reform, which is lasting in Ukraine, has introduced many new approaches, ideas and practices into the daily living. The issues of decentralization of public authority, the practical implementation of the principle of subsidiary and so forth are on the table. At the same time, it is essential that reforms are undertaken prudently and don't worsen the available achievements in the field of local government gained during the years of independence. In this regard, an important practical task is the constant commitment to the guarantees of local government when conducting the rule-making activities. Consequently, an important theoretical task is doctrinal developments in this area.

Previous study. The issue of the guarantees of local government in general and the guarantees of local government in Ukraine was studied by such authors as O. M. Boryslavska [1], P. M. Liubchenko [2], Yu. A. Svirin [3], O. S. Shuhrina [4], I. S. Shchebetun [5] et al. However, their developments and best practices have not been properly generalized in the Ukrainian legal literature yet.

The purpose of the article is to generalize the opinions of modern Ukrainian experts in municipal law on the guarantees of local government.

Statement of the basic material. The guarantees of local government are the conditions and events that carry the possibility of realization and protection of local government. The availability of an ample scope of the guarantees of local government in the democratic states is related to the proclamation of the principle guaranteeing local government. Thus, Article 7 of the Constitution of Ukraine proclaims that local self-government is recognized and guaranteed in Ukraine. A system of the guarantees of local government in Ukraine is also based on the international, incl. European, municipal standards – on the provisions of the European Charter of Local Self-Government and other documents.

I. S. Shchebetun separated features inherent in the guarantees of local government: a) purposeful – the guarantees ensure the smooth and effective exercise of the rights and responsibilities of local

government; material – the guarantees are found in the social and domestic environment required for the exercise of powers of local government, consolidated in the rules of law and embodied in administrative enactments, local customs and traditions; c) procedural – the guarantees are stipulated by the activities of bodies, enterprises, institutions, organizations and their officials, as well as citizens; d) casual – the guarantees function after the occurrence of legal facts, which are associated with the acquisition of powers by bodies and officials of local government before the achievement of certain, intended result.

The guarantees of local government can be classified on various grounds: the territory of action, the essence etc. One of the major classifications of the guarantees of local government is their classification on general and special. The general guarantees of local government are political, economic and cultural. The special guarantees of local government are legal guarantees.

The general guarantees of local government are the main conditions for the existence of a democratic society, without which the local government is impossible. In the economic realm of social life, the general guarantees of local government consist of an economic system of society, market economy, the availability of several forms of ownership, incl. communal property, equal protection of all forms of ownership, etc. The general guarantees of local government of political character involve the availability of democratic regime in the state, people's rule, multiparty system, etc. In the cultural sector of social life, the general guarantee of local government cover the cultural level of society, incl. legal awareness, ideological diversity, prohibition of racial and religious hatred, free access to information, encouragement to reflect historical, cultural, national and other peculiarities of territorial communities in the text of their statutes, etc.

The special (legal) guarantees of local government can be classified into material (associated with the availability of legal rules which determine certain rights, responsibilities and prohibitions, establish legal liability for offenses), institutional (statutory consolidation of the system of public authorities aimed at protecting and ensuring rights and freedoms) and procedural, which prescribe the procedure of exercise of rights and freedoms and activities of local government bodies and officials.

The special guarantees of local government are also classified according to other features. For instance, Yu. O. Svirin proposes to consider them as a set of guarantees of administrative independence of local government and guarantees of financial and economic independence of local government. The guarantees of administrative independence of local government include

the vision of public power as such, which is represented by state power and local government; enshrining a rule, according to which local government is recognized and guaranteed in the state, in the Constitution of Ukraine; territorial communities' inherent statutes and symbols; a possibility of voluntary amalgamation of territorial communities; endowment of local government bodies with their competence; a competence of local government bodies to establish associations of local government bodies and their amalgamation, etc.

The guarantees of financial and economic independence of local government are related to the availability of material and financial basis of local government, their freedom to establish local taxes and fees, as well as create and independently manage municipal utilities, institutions, organizations, and to the fact that the state financially supports local government, participates in the generation of local budget revenues.

In addition to the guarantees of financial and economic independence of local government and the guarantees of administrative independence of local government, the literature also distinguishes the guarantees for the protection of the rights of local government. They consist of the right to judicial protection of local government proclaimed by the Constitution of Ukraine (local government bodies and officials have the right to appeal to a court to declare illegal acts of local executive bodies, other local government bodies, enterprises, institutions and organizations restricting the rights of territorial communities, the powers of local government bodies and officials), the possibility of declaring acts of local government bodies and officials illegal on the grounds of their inconsistency with the Constitution or laws exclusively by a court decision, etc.

The classification of guarantees by sources provides grounds to single out ones contained in the Constitution of Ukraine, laws of Ukraine and by-laws. The Basic Law groups the guarantees of local government in sections I (Articles 1, 5, 7, 9, 13, etc.) and XI (Articles 140 – 146).

The analysis of the laws of Ukraine, which involve the guarantees of local government, concludes that the Law of Ukraine "On Local Self-Government in Ukraine" dated May 21, 1997, is fundamental in this area. In particular, it provides for the availability of the minimum budget of local government (estimated amount of the local budget necessary for the exercise of powers of local government at the level of minimum social needs guaranteed by the state), the minimum level of social needs (the minimum level of social services guaranteed by the state per capita within the entire territory of Ukraine); it is noted that the independence of local budgets is guaranteed by own and national revenues statutory assigned

to them permanently and by the right to independently determine the use of local budgets under the law. According to the provisions of this act, the state financially supports local government, participates in the generation of local budget revenues, and monitors the legal, appropriate, prudent, efficient spending of funds and their proper accounting. It guarantees local government bodies the income base sufficient to provide the population with services at the level of minimum social needs. In cases when revenues from national taxes and fees assigned to local budgets exceed the minimum size of the local budget, the state withdraws part of the surplus from the local budget to the state budget in the manner prescribed by the Budget Code of Ukraine.

There is Section IV in the Law of Ukraine "On Local Self-Government" dated May 21, 1997, which is devoted to the guarantees of local government. It stipulates the guarantees of local government, its bodies and officials include the following: territorial communities, bodies and officials of local government independently exercise the powers granted to them; bodies of executive power, their officials do not have the right to interfere with the legitimate activities of bodies and officials of local government as well as to resolve issues referred to in the Constitution of Ukraine and other laws as the powers of local government bodies and officials, except for cases when the powers delegated by councils are executed, and in other cases stipulated by law; in case of examination of issues affecting the interests of local government by local state administration, it shall notify the relevant bodies and officials of local government; local government bodies and officials have the right to apply to the court to declare illegal acts of local executive bodies, other local government bodies, enterprises, institutions and organizations which restrict the rights of territorial communities, powers of local government bodies and officials.

One of the guarantees of local government is the accountability and dependence of local state administrations on rayon (district) and oblast (regional) councils. Thus, local state administrations are accountable to the relevant rayon and oblast councils for the execution of socio-economic and cultural development programs, rayon and oblast budgets; they are also accountable and controlled in terms of powers delegated to them by particular rayon and oblast councils and compliance with the council decisions on these issues. A rayon or oblast council may, by secret ballot, express a vote of no confidence in the head of the relevant local state administration on account of which the President of Ukraine makes a decision and gives a reasoned answer to the council. If not less than two-thirds of the deputies from the total

membership of the relevant council expressed distrust in the head of the rayon, oblast state administration, the President of Ukraine decides on the resignation of the head of the local state administration.

An important guarantee of local government enshrined in the law is the binding nature of acts and legal requirements of local government bodies and officials. Thus, acts of the council, village, settlement, city mayor, chairman of the district council in the city, executive committee of the village, settlement, city, district council in the city (if any), adopted within the powers granted to them, are compulsory for all executive bodies, citizen associations, enterprises, institutions and organizations located in the relevant territory, officials, as well as citizens who permanently or temporarily reside in the relevant territory. At the request of the specific local government bodies and officials, the heads of enterprises, institutions and organizations located or registered in the relevant territory regardless of ownership are obliged to come to these bodies to submit information on the issues related to the authority of the council and its bodies, respond to deputies' inquiries. Local executive bodies, enterprises, institutions and organizations as well as citizens are legally liable to local government bodies for damage caused to local government by their actions or inaction and non-compliance with decisions of local government bodies and officials took within the limits of their powers.

Some provisions of the Constitution and laws of Ukraine, which establish the guarantees of local government, were sometimes checked for constitutionality or officially interpreted by the Constitutional Court of Ukraine (for more details: case decision on the administrative-territorial system as of July 13, 2001, the case of particular aspects of the exercise of executive power and local self-government in the city of Kyiv as of December 25, 2003, the case of cancellation of acts of local government bodies as of April 16, 2009 etc.). All cases of the Constitutional Court of Ukraine concerning local government bodies were initiated either by the President of Ukraine or people's deputies consisting of minimum 45 persons or other empowered entities. The issue of entitling local governments to appeal to the Constitutional Court of Ukraine is currently considered in the context of amending the Constitution due to the decentralization of public power in Ukraine.

Conclusions. Having generalized the opinions of modern Ukrainian experts in municipal law on the guarantees of local government, the author has drawn the following conclusions. The guarantees of local government are the conditions and events that carry the possibility of realization and protection of local government. The guarantees of local

government can be classified on various grounds: the territory of action, the essence etc. One of the major classifications of the guarantees of local government is their classification on general and special. The general guarantees of local government are the main conditions for the existence of a democratic society, without which the local government is impossible. The general guarantees of local government are political, economic and cultural. The special guarantees of local government are legal guarantees. The special (legal) guarantees of local government can be classified into material (associated with the availability of legal rules which determine certain rights, responsibilities and prohibitions, establish legal liability for offenses), institutional (statutory consolidation of the system of public authorities aimed at protecting and ensuring rights and freedoms) and procedural, which prescribe the procedure of exercise of rights and freedoms and activities of local government bodies and officials.

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