MONIKA BOGUCKA-FELCZAK
redakcja naukowa

FINANSE PUBLICZNE A KONSTYTUCJA

wydawnictwo
poltext

Recenzenci
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Redakcja
Jadwiga Witecka

Projekt okładki
Studio KARANDASZ

Skład
Protext

Warszawa 2020

Publikacja dofinansowana ze środków Uniwersytetu Łódzkiego.

Poltext Sp. z o.o.
www.poltext.pl
handlowy@mtbiznes.pl

ISBN 978-83-8175-052-3

Spis treści

jest również ich działalność szkoleniowa, instruktażowa i opiniodawcza oraz informacyjna[35].

Niewątpliwie nadzór i kontrola finansowa nad działalnością samorządu terytorialnego jest niezbędna. Z jednej strony wymaga tego ustawa zasadnicza, a z drugiej – bezpieczeństwo obrotu prawno-finansowego. Niemniej jednak trzeba kiedyś podjąć refleksję nad dalszym funkcjonowaniem rio w obecnej formule ustawowej, a w szczególności ustrojowej. W moim przekonaniu w działalności rio razi zasadniczo brak nadzoru administracji rządowej nad ich działalnością oraz tzw. samowybieralność wewnętrzna jej organów. Taka sytuacja sprawia wrażenie pozostawania izb poza zasięgiem aparatu administracji państwowej, czyli władzy wykonawczej w państwie, która nie ma żadnego wpływu na strukturę izb i kwestie personalne w tym względzie. Trzeba bowiem zwrócić uwagę na taki oto stan, gdzie owe organy funkcjonują niezmiennie w postaci jeszcze z 1992 r., czyli powstały w innych warunkach społeczno-politycznych i trwają przy hermetycznie skostniałych kadrach, być może nadal posiadających wpływ nieformalny na sposób i formułę działalności izb przyjętą w tamtych czasach. W tym zakresie powinna nastąpić gruntowna ocena funkcjonowania instytucji osadzonych w realiach wczesnych lat 90. XX w. niezupełnie jasnej tzw. transformacji ustrojowej, gdzie wydaje się, że pomimo upływu 27 lat trwania, ogólnie mówiąc, filozofia działania i składy personalne izb mogą wydawać się wewnętrznie mało przejrzyste[36]. Symptomatyczne jest, że pozostałe organy nadzoru nad jednostkami samorządu terytorialnego (Prezes Rady Ministrów, wojewoda – przyp. aut.) podlegają nieustannym niemal zmianom w działalności i osobowych, natomiast rio nie podległy jak dotąd żadnej poważnej zmianie. Nie wydaje się przy tym, czy dyskusja w tym zakresie jest potrzebna lub niepotrzebna. Taka dyskusja powinna być prowadzona i przynieść określone rozwiązania legislacyjne.

Abstract

In this study, I am analyzing the legal-constitutional system of regional accounting chambers in the light of constitutional provisions and applicable ordinary laws, and I also assess the functioning of legal provisions in this area, also on the basis of provisions regulating the functioning of other bodies overseeing local government. In the final conclusions, I point to several aspects of the functioning of the chambers and I formulate the need for a thorough evaluation of the activity of the chambers of accounts.

[35] W omawianym zakresie podzielam uwagi poczynione w niepublikowanej rozprawie doktorskiej Pani Anny Renaty Wąsowskiej, *Administracyjnoprawny status regionalnych izb obrachunkowych i ich kompetencje w zakresie nadzoru i kontroli nad działalnością jednostek samorządu terytorialnego*, Lublin 2019, s. 556–558.

[36] W tym zakresie warto wspomnieć, że dopiero w 2016 r. były podejmowane próby wszczęcia procesu legislacyjnego w zakresie nowelizacji ustawy o rio, np. https://www.senat.gov.pl/download/gfx/senat/pl/senatposiedzeniatematy/3505/drukisejmowe/1597-a.pdf

The Constitutional Structure of Local Government and Its Finances in Ukraine in Front of the Court of History

Petro Patsurkivskyy Ruslana Havrylyuk***

Problem statement. Public finance refers to the fundamental social values. They are the condition of being of all human communities. Depending on the extent to which they cover human needs, public finances are most often divided into national, regional and local. At least three theories of the nature of local public finance and local self-government, which are paradigmally different, are well known in science.

One of the oldest theories among them is *the theory of the community's natural rights to self-government and local finance.* Its origins are rooted in ancient Greek policies. This theory was fully formed and acquired modern content during the French Revolution at the end of the 18th century. Its quintessence is that similarly to the natural human rights the natural rights of the community also exist. This theory is based on the postulate that a territorial community as a self-governing phenomenon is as self-sustainable as a state. According to this theory, local governments have their own competence and functions and are not subordinate to the state in their activities. They are separate of the natural functions of state and are indivisible owners of local public finances. Each local community independently decide where and how to spend these funds. Usually, supporters of the theory of the territorial community's natural rights to self-government and local public finances argue that although the state can influence on the activities of territorial communities through legislation, but it does not have the right to deprive these communities of their natural rights. In the second half of the twentieth – beginning of the twenty-first centuries, this theory is experiencing a period of renaissance. It has become widespread in Europe and the Western world as a whole.

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The so-called *étatistic theory of local self-government* is diametrically opposite in its fundamental approaches. It was formed in the middle of the XIX century, and the largest contribution to its creation belongs to the German school of lawyers. The quintessence of this theory is the postulate that local governments do not have original natural rights, but they are a part of state power and subordinate to it in everything, and they are a local state agents. Hence, supporters of this theory conclude that the scope of functions and tasks that local authorities have is completely determined by state power and, therefore, local self-government cannot be regarded as an institution equivalent to the state. These paradigm principles were the basis that the Soviet concept of local self-government was built on.

In the second half of the XIX century, there was another *theory of local self-government* that appeared in Germany, which became a kind of synthesis of the two previous theories. It was called *the theory of social self-government, or the theory of economic self-government*. Later, it was transformed into *the theory of social and economic self-government*, and somewhat later it was called *the theory of municipal dualism*. According to this theory, local government's natural rights exist only in the field of non-political relations, in other words, in the field of so-called local affairs. The government does not intervene in these local affairs. As for political relations, this sphere is rightfully in the scope of exclusive competence of state power. Local governments in the field of political relations do not perform their own functions, but act as structural units of state power and play the role of its agents at the local level.

This theory was taken as the doctrinal basis of the constitutional structure of local self-government and its finances in the Constitution of Ukraine (1996)[1]. At the end of 1996, Ukraine acceded to the European Charter of Local Self-Government and granted it power in Ukraine. Its legal structure of local self-government is based mainly on a basis close to those on which the theory of natural rights of the community is based. Thus, a paradigm conflict was laid between the fundamental principles of the legal structure of local self-government and its finances in Ukraine.

The degree of scientific development of the problem is characterized mainly by the initial stage. This topic throughout the years of independence of Ukraine is on the periphery of the scientific interests of jurists and representatives of other branches of science. The issues of local self-government and its finances are considered mainly in the context of other problems, indirectly and only occasionally, in the light of initial generalization – as a separate, independent subject of research. The period of quantitative accumulation of mainly empirical scientific facts about local self-government and its finances in Ukraine has not yet ended. The need has ripened for carrying out a philosophical and legal analysis of the problems of local self-government and its finances in Ukraine.

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[1] Конституція України від 28 червня 1996 року (станом на 21 лютого 2019 року) // [Електронний ресурс]. – Режим доступу : http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80

The purpose of the study is to carry out a philosophical and legal analysis of the constitutional structure of local self-government and its finances in Ukraine, comparing it with the legal structure of local self-government in the European Charter of Local Self-Government and its finances. It is specified in the following tasks: a) to reveal the historical background for the appearance of the constitutional structure of local self-government and its finances in sovereign Ukraine; b) to disclose the legal matrix of local government and its finances under the Constitution of Ukraine (1996); c) to analyze the unconstitutional orientation of the legal structure of local taxes and fees of the Tax Code of Ukraine.

As the basic **methodological technique** of this study, the substantiation of its main provisions, assessments, conclusions and proposals, the **anthroposociocultural approach** and its systematic cognitive tools are used.

Statement of basic materials. ***1. Historical background for the appearance of the constitutional structure of local self-government and its finances in Ukraine.*** The sociocode of local government and its own public finances has long-standing historical roots in Ukraine. It reaches at least the period of existence of the Old Rus' principalities and was formed, according to V. Gorskiy, thanks to the "fundamentally anthropocentric"[2] worldview of ancient Rus, and later Ukrainian. Throughout all Ukrainian history foreigners-invaders have tried from time to time to oppose this sociocode the etatistic sociocode of the Ukrainian social structure that was extrinsic from the outside. The last of these attempts was in the USSR and its Ukrainian SSR. According to the Constitution of the Ukrainian SSR 1978, local self-government did not exist in Ukraine, and «local councils of people's deputies» «carried out the functions of the state locally». Until 1990, all social life in Ukraine was based on the so-called "principle of democratic centralism". Its quintessence was the obligation of decisions of higher hierarchies of state bodies to bodies subordinated to them in accordance with their functions and powers. During the existence of the Soviet state in Ukraine, these values have become the mental property of most Ukrainians[3].

The most recognizable symbols of the beginning of the new – post-Soviet – historical era in Ukraine, the humanistic civilizational revolution in the mentality of Ukrainian society, the affirmation of universal values were the adoption of such historical acts as the «Declaration on State Sovereignty of Ukraine», that was approved by the Verkhovna Rada of the Ukrainian SSR on July 16, 1990, and the "Act of Declaration of Independence of Ukraine", that was also adopted by the "supreme body of state power" on August 24, 1991 and approved by a nationwide referendum on December 1, 1991. These Acts de jure "novelized" the Constitution (Basic Law) of

[2] Горський В.С. Нариси з історії філософської культури Київської Русі (середина XII-середина XIII ст.) / В. С. Горський. – К.: Наукова думка, 1993. – С. 111.

[3] Конституція РСР від 20 квітня 1978 р./ Електронний ресурс/ Режим доступу: https://zakon.rada.gov.ua/laws/show/888-09

Ukraine of 1978 with amendments and additions, they laid foundations for the new social and legal values and standards of already post-Soviet Ukraine.

However, the actual separation from the historical continuity of the Soviet empire, especially in the sphere of inertia of social development, in the everyday pursuit of the previous etatistic values of a totalitarian state, in the theory and practice of new state building and the emergence and development of a new – civil – society extended over a whole historical period. With particular force and expressiveness, this was manifested in the fetishization of the state and state institutions and in paternalism as the quintessence of this fetishization. The emergence of Ukraine as a sovereign and independent state in Ukrainian society gave rise to the illusion, that this state in the form of its basic institutions for the domestic society in actual fact is, according to Hegel, "the walk of God on earth" and that it, as an almighty and irresistible force, will decide for Ukrainians all their eternal problems.

A convincing illustration of Ukrainians' unlimited trust to the national state is, for example, the first sentence of the preamble of the current Constitution of Ukraine: "The Verkhovna Rada of Ukraine on behalf of the Ukrainian people – citizens of Ukraine of all nationalities, expressing the sovereign will of the people ...". *In fact, the embodiment of the sovereign will of the people* demanded the use of another constitutional construction: «We, the Ukrainian people, in the name of the Verkhovna Rada of Ukraine, accept the present Constitution ...".

A great obstacle to the revival and affirmation in the historical memory of the Ukrainians, firstly, the mental construct of local self-government and its finances, and its then transfer to matter of the text of the Constitution of Ukraine, was paternalism in the first half of the 90s of the last century, which permeated all spheres of life of Ukrainian society, and arose like a Phoenix from the ashes. Especially destructive at that time and in the subsequent periods of the formation of Ukraine was the tax-legal paternalism, which directly related to local public finances. As it later turned out in special scientific studies of this phenomenon, tax legal paternalism is a specific way of relations between a fiscal state and taxpayers, argumentative-discursive practice and politics of this state, the ideology and culture of its tax law. Its existential rooting in the matter of tax law is due to the fact that this sphere of law is the central arena of a clash of public and private needs and interests of taxpayers, from which territorial communities are formed, on the one hand, and the needs and interests of the fiscal state, on the other. The desire of the fiscal state to accumulate in its own funds as much of the financial resources at the expense of tax revenues for satisfaction its own needs and interests was openly opposed with the taxpayers' reluctance to give the state some of the goods created by them for the sake of their public benefit not guaranteed by the state as a whole[4]. The level of public dissatisfaction of the Ukrainian people with the practice of tax law implementation by the domestic fiscal state has increased by the mid-1990s to a threatening scale for the so-

[4] Див.: Тараненко К.Ю. Податково-правовий патерналізм: правова сутність та форми прояву: монографія. – Київ: Юрінком Інтер, 2018. – С. 94.

ciety as a whole. A compromise between the domestic fiscal state and the Ukrainian society on issues of local self-government and its finances has become a historic necessity.

2. Legal matrix of local self-government and its finances under the Constitution of Ukraine (1996). In order to adequately comprehend the quintessence of the constitutional-legal matrix of local self-government and its finances in Ukraine, it is necessary to understand firstly the constitution phenomenon itself: what is it for the society in itself? Among the multitude of answers already available for this question, the most close to the true, as it seems for us, is the answer of G. Gadzhiev. He notes, in particular, that in the everyday structure of the present Constitution, three layers of legal matter should be distinguished: 1) natural law as an objectively existing system of inalienable human rights belonging to each from the birth; 2) positive constitutional law (the reality of the text of the relevant Constitution); 3) the legal traditions and law-enforcement practices established in the respective country, in other words, the historical and socio-cultural context that gave rise to the relevant Constitution[5].

The current Constitution of Ukraine is not an exception – it has incorporated all three of the above layers of legal matter, but has done so very specifically. The natural-legal layer in the ontological structure of the Constitution of Ukraine is determined by eclecticism, does not occupy a dominant position in it, is not system-forming for it as a whole, as in the constitutions of developed countries of the world. It is deformed by the dominant layer of positive constitutional law (the reality of the text of the Constitution) and is philosophically and methodologically subordinate to it. The latter is due to the fact that the domestic legal and mental traditions, as well as the historical tradition in general, which immediately preceded the adoption of the Constitution of Ukraine, were anti-human, centrist, anti-natural, and were characterized by etatistic orthodoxy.

The Ukrainian scientific literature on constitutional law throughout the post-Soviet period underestimated the role and importance of the historical preconditions for the adoption of the national Constitution, which are the givenness for the constitution of any country, that cannot be overlooked. As noted by the well-known German constitutionalist J. Isensee, the constitution codifies not only basic legal norms – the real constitution also codifies the links with the past of the corresponding society[6].

This methodological reservation regarding the Constitution of Ukraine was specified by M. Savchyn, who paid attention to the fact that Ukraine was a colonial country until the moment of the sovereign state. "The post-colonial syndrome lies in the fact that the process of exercising power in Ukraine since independence has

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[5] Гаджиев Г.А. Официальное толкование Конституции: сочетание онтологического и эпистемологического подходов // Правоведение. – 2012. 11. – С.149.

[6] Див.: Государственное право германии. Сокращенный перевод немецкого семитомного издания / Н.Ахтенберг и др. – М., 1994. – Т. 1. – С. 12.

largely imitated in softer manner the Russian imperial practices of government. It introduced a constitutional process into an archaic authoritarian framework ... The over-centralization of power in the Soviet Union was linked to a disregard for fundamental human rights and freedoms»[7].

Excessive centralization and concentration of power was inherited by post-Soviet Ukraine and legally formalized this matrix of state and social order in its Constitution. Taken by themselves, taken out of the context of the Constitution of Ukraine, these formulas, at first glance, are written well-considered and well-grounded, often even revolutionary. By the way, this is the form given to the constitutional model of redistribution of public wealth in Ukraine: "The budgetary system of Ukraine is based on the principles of fair and impartial distribution of public wealth among citizens and territorial communities"[8] – that is declared in the first part of Article 95 of the Constitution of Ukraine. In the following three parts of the same article, the category "citizens" is replaced by the categories "state" and "state budget of Ukraine"[9].

In fact, in Ukraine in the sphere of "distribution of public wealth between citizens and territorial communities" everything goes against the principles of justice and impartiality. This is primarily due to the centralization and concentration of a large proportion of all public financial resources in the State Budget of Ukraine – up to 85%[10] and even more, the governmentalization of them. After that, public financial resources are already redistributed as public funds among their consumers, including territorial communities not on the principle of «everyone at work» or «each according to his needs», but on the basis of the method of financing budget spending units according to the principles of their greater or less political loyalty, tolerance and patience to the relevant ruling elites in Ukraine, according to other related recent principles.

These principles were laid out by the domestic establisher of the constitution in a separate section XI «Local Government» of the Constitution of Ukraine. In particular, in Art. 140, which opens this section, provides the following constitutional definition of local self-government: "Local self-government is the right of a territorial community – residents of a village or voluntary association of residents of several villages, towns and cities in the rural community – to independently resolve issues of local importance within the Constitution and **laws of Ukraine** (highlighted by us – P.P. and R.H.). This is exactly how the local self-government was interpreted by the Constitutional Court of Ukraine in the process of considering the case of unification of terri-

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[7] Савчин М. Конституційні інновації та вірність Конституції // Вісник. – 2016. – № 7-8 (411-412). – С. 44-45.

[8] Конституція України від 28 червня 1996 року (станом на 21 лютого 2019 року) // [Електронний ресурс]. – Режим доступу : http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80

[9] Там же.

[10] Еліанд і Надія Гонченки, Хто і навіщо гальмує децентралізацію // Дзеркало тижня, № 30 (426), 17 серпня 2019 р.

torial communities on June 18, 2002[11] and in the decision of December 25, 2003 on the peculiarities of exercising executive power and local self-government in the city of Kiev – as the right of the territorial community[12]. Paradigmically, this is in line with the concept of the territorial community that underlies the European Charter of Local Self-Government[13].

The opposite is the situation regarding the constitutional construction of local government finances in Ukraine. It is outlined in the broadest terms in Articles 142 and 143 of the Constitution of Ukraine. In particular, in the first part of Art. 142 of the Constitution of Ukraine states: "The material and financial basis of local self-government is movable and immovable property, **local budget revenues** (allocated by us – P.P., R.H.), other funds, land, natural resources owned by territorial communities of villages, settlements, cities, districts in cities, as well as objects of their joint ownership, which are managed by district and regional councils ... "[14]. In the abstract, irrespective of the specific territorial communities of Ukraine, it is an attractive legal construction. However, in reality, since its inception it has made fully subsidized 90% of the territorial communities of Ukraine. This is directly contradicts to the requirements of Article 9 of the European Charter of Local Self-Government, which is devoted to the legal regulation of the finances of territorial communities. In this article, worldviews and methodological emphasis are placed on completely different aspects than in the Constitution of Ukraine.

The European Charter of Local Self-Government places at the forefront the "right of local self-government bodies" to have "their own adequate financial resources, which they can freely dispose of within their powers." In this context, the concept of «adequacy of financial resources» is disclosed in the European Charter of Local Self-Gov-

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[11] Рішення Конституційного Суду України у справі за конституційним поданням 45 народних депутатів України щодо офіційного тлумачення положень частини першої статті 140 Конституції України (справа про об'єднання територіальних громад) від 18 червня 2002 р. № 12-рп/2002 // Вісник Конституційного суду України. – 2002. – № 3. – С. 31.

[12] Рішення Конституційного Суду України у справі за конституційним поданням Президента України та конституційним поданням 56 народних депутатів України про офіційне тлумачення положень частин першої, другої, третьої, четвертої статті 118, частини третьої статті 133, частин першої, другої, третьої статті 140, частини другої статті 141 Конституції України, статті 23, пункту 3 частини першої статті 30 Закону України „Про державну службу», статей 12, 79 Закону України „Про місцеве самоврядування в Україні", статей 10, 13, 16, пункту 2 розділу VII Прикінцеві положення" Закону України „Про столицю України – місто-герой Київ", статей 8, 10 Закону України «Про місцеві державні адміністрації», статті 18 Закону України „Про службу в органах місцевого самоврядування" (справа про особливості здійснення виконавчої влади та місцевого самоврядування у місті Києві) від 25 грудня 2003 р. // Урядовий кур'єр. – 2004. – № 11. – 21 січня.

[13] Європейська хартія місцевого самоврядування, від 15 жовтня 1985 р.// Електронний ресурс/ Режим доступу: https://zakon.rada.gov.ua/laws/show/994_036

[14] Конституція України від 28 червня 1996 року (станом на 21 лютого 2019 року) // [Електронний ресурс]. – Режим доступу : http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80

ernment, both doctrinal and regulatory, namely «the volume of financial resources of local self-government bodies», which must necessarily comply with the powers provided for by these bodies by the Constitution or the law of the country. The need to protect financially weaker local governments by introducing budgetary equalization procedures or other measures to overcome the effects of the unequal distribution of potential sources of funding and the financial burden, they must bear, is specifically outlined in the European Charter of Local Self-Government. At the same time, the Charter categorically warns that such procedures or measures should not restrict the freedom of action of local self-government bodies under their own responsibility. Finally, this charter contains another paradigmically important clause on the financial resources of local governments, namely that financial subsidies to local governments are not intended to finance individual projects wherever possible. More importantly, it is prescribed, that the granting of donations does not in any way undermine the fundamental freedom of local governments to pursue their policies within their own competence.

All the above-mentioned principles, which constitute the quintessence of the European Charter of Local Self-Government on the financial resources of local self-government bodies, deserve to be implemented in the Constitution of Ukraine. Without this, the current constitutional model of redistribution of Ukraine's public wealth between the state and the territorial communities that create that wealth will remain purely statist, de facto Soviet. It is now one of Ukraine's biggest obstacles to social, economic, cultural and historical progress.

3. The unconstitutional orientation of the legal structure of local taxes and fees in the Tax Code of Ukraine. Article 143 of the Constitution of Ukraine states that: "Territorial communities of villages, settlements, cities, directly or through their local self-government bodies ... establish local taxes and fees in accordance with the Law ...»[15]. The term «establish» in modern Ukrainian is officially interpreted as «Creating, approving, legalizing anything»[16]. Can the territorial communities of Ukraine establish, directly or through their own bodies, local taxes and fees? The creator of the Constitution of Ukraine, which empowered them with such powers, requires that it must be carried out "in accordance with the law". But the domestic legislator generally denied the right of territorial communities to establish the local taxes and fees directly or through their bodies.

Still, the strange country is Ukraine – by the ordinary law of Ukraine, more precisely, its Tax Code it has been paradigmically changed, in comparison with the prescriptions of the Constitution of Ukraine, the subject of introduction of local taxes and fees. Thus, in accordance with Article 1, paragraph 1: "The Tax Code regulates rela-

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[15] Конституція України від 28 червня 1996 року (станом на 21 лютого 2019 року) // [Електронний ресурс]. – Режим доступу : http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80

[16] Великий тлумачний словник сучасної української мови (з доп. і допов.) /Уклад. і голов. ред. В.Т.Бусел. – К.: Ірпінь: ВТФ «Перун», 2005. – С. 1517.

tions arising in the area of taxes and fees, in particular, defines an exhaustive list of taxes and fees of Ukraine and the procedure for their administration, taxpayers and levies, their rights and duties, the competence of the supervisory authorities, the powers and duties of their officials during the tax control, as well as the responsibility for violation of tax legislation[17]". Territorial communities of Ukraine (rural, settlement, city councils, etc.), according to the Tax Code of Ukraine, can only «change the rates of local taxes and fees» and only «within the limits of the rates» determined by the Tax Code of Ukraine, that is, by the state. According to paragraph 10.5 of Art. 10 of the Tax Code of Ukraine: «The establishment of local taxes and fees not provided for in this Code is prohibited»[18].

That is, in Ukraine, in fact, as it was legally in the previous period of its development, local taxation, more precisely, local taxes and fees continue to remain as state ones. This manifests itself in the legal constructs of local taxes and fees, in the subjects and methods of their introduction, change or cancellation, in the place of local taxes and fees in the system of sources of financial resources of local self-government, in a number of other properties of local taxes and fees. To put it briefly and metaphorically, these taxes are local only in their form, and by their true nature they continue to remain state taxes.

The legal nature of decentralization, which has been successfully implemented in Ukraine since 2014, has not changed their legal nature. Its quintessence is manifested in the creation of united territorial communities (UTC) in the country. Their present advantages over ordinary communities are mainly the temporary peculiarities of forming their budgets – the state tries to support them with incomparably larger monetary subsidies than those received by ordinary communities. This does not create sufficient financial well-being for UTC for the long-term future, and even more so for all time. And most importantly, the paradigm of their complete dependence on the will of the state does not change. I. Fursenko, one of the leaders of the All-Ukrainian Association of Rural and Settlement Councils, rightly points out that decentralization in his understanding is the development of autonomous and capable local governments. It requires the introduction of fiscal decentralization. It is also about a substantial review of the functions and powers of public authorities and local self-government, and of the redistribution of powers between the center and the "places"[19]. In other words, it is essentially about re-establishing the new – anti-etatistic – foundations of the Ukrainian state. The latter inevitably gives rise to fundamental worldviews, legal and other problems, most of which in the Procrustean bed of the current Constitution of Ukraine as a whole and its matrix of local taxes and fees are indistinguishable in principle.

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[17] Податковий кодекс України (станом на 01.07.2019 р.). // [Електронний ресурс]. – Режим доступу : w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=38590&pf35401

[18] Там же.

[19] Фурсенко І. Децентралізація – системні помилки // Юридичний вісник України. – № 30 (1255). – 26 липня-1 серпня 2019 р.

Conclusions

1. The historical prerequisites for the revival and development of territorial (local) self-government and its finances in Ukraine in the post-Soviet period of its existence were extremely unfavorable. By the time the sovereign Ukrainian state appeared, local self-government in Ukraine did not exist in principle. Local councils of people's deputies carried out the functions of the state locally. All social life in Ukraine was based on strict observance of the so-called "principle of democratic centralism." Its quintessence was the binding decisions of the highest hierarchical bodies of state power bodies for the subordinate entities according to their functions and powers. During the existence in Ukraine, these values have become the mental property of the majority of Ukrainians.
2. The constitutional and legal matrix of local self-government in Ukraine was constructed in its 1996 Constitution. In general, it paradigmally corresponds to the concept of a territorial community, which forms the basis of the European Charter of Local Self-Government. Nevertheless, in the Constitution of Ukraine it is outlined only with dashed lines, and therefore, in the absence of the corresponding constitutional-legal and mental traditions of Ukrainians, it is quite easily amenable to its various deformations. Its main drawback is an outright bias in the construction of constitutional values of local self-government towards power-centrism at the expense of territorial communities.
3. The current constitutional structure of the financial support of local self-government was originally written in the Constitution of Ukraine unsatisfactorily and directly contradicts the European standards for the formation of financial resources of local self-government, as set out in the European Charter of Local Self-Government. In Ukraine, such principles of financial support for the right of local self-government are mostly rejected, as fiscal decentralization, community financial sufficiency, and justice. It is written out de jure in Art. 142 of the Constitution of Ukraine, the right of territorial communities and local governments to own taxes and fees is de facto canceled by the Tax Code of Ukraine, it comes out of the fact that only the state tax law exists in Ukraine. Without the introduction of appropriate amendments to the Constitution of Ukraine, this situation cannot be fundamentally changed for the better in principle.
4. The legal model of UTC, currently proposed by the Ukrainian state as an alternative to the bankrupt system of nationalized local self-government and nationalized local taxes and fees, does not change the paradigm nature of existing local taxes and fees and local self-government as such – for their main purpose in Ukraine they continuously remain to expect mercy from the state, and to be an object for the policy of the domestic state. The situation can be cardinally changed only upon the condition of actual reestablishing of the Ukrainian state on the fundamental European values.

Abstract

Based on the anthroposociocultural approach, the article explores the historical background for the emergence of the constitutional structure of local self-government and its finances in Ukraine, the legal matrix of these phenomena in the Constitution of Ukraine. The conclusion is substantiated that the legal structure of the local government finances of the Tax Code of Ukraine contradicts the Constitution of Ukraine. The authors substantiate the need for innovative transformation of the constitutional structure of local self-government of Ukraine within the framework of the European Charter of Local Self-Government.

Keywords: local government; local government finance; Constitution of Ukraine; European Charter of Local Government.

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Рішення Конституційного Суду України у справі за конституційним поданням 45 народних депутатів України щодо офіційного тлумачення положень частини першої статті 140 Конституції України (справа про об'єднання територіальних громад) від 18 червня 2002 р. № 12-рп/2002 // Вісник Конституційного суду України. – 2002. – № 3. – С. 31.

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