

I. L. Borodin,

Doctor of Juridical Sciences, Professor
ORCID ID: <https://orcid.org/0000-0002-1874-3238>

O. M. Myronets,

Candidate of Juridical Sciences
ORCID ID: <https://orcid.org/0000-0002-5035-2384>

HISTORY AND MODERNITY OF LOCAL SELF-GOVERNMENT

National Aviation University
Liubomyra Huzara Avenue, 1, 03680, Kyiv, Ukraine
E-mails: ivan.borodin@npp.nau.edu.ua, o.m.myronets@ukr.net

Purpose: of the article is to consider the historiography of local self-government and analysis of scientific constructions to find its basic elements that could be accepted to create an optimal model of this institution in Ukraine and the introduction of progressive approaches to statehood in Ukraine. **Research methods:** historical, phenomenological, comparative-legal, sociological, formal-logical, dialectical. **Results:** the proposed analysis of the history of local self-government, its understanding by different scientists, representatives of different scientific schools, should serve the development of scientific thought in a given paradigm, become, as appropriate, the basis for the further development and improvement of legislation defining and regulating local government as a state institution, as a sign of mature democracy and civil society. **Discussion:** the issue of local self-government attracts the attention of legal science. This is due to the fact that as society develops, the issues of improving the efficiency and democratization of public administration begin to be increasingly important. The proclamation of Ukraine's independence contributed to the intensification of the process of democratization of our society and our state. An important part of this process is represented by the building an optimal system of local self-government in Ukraine, which in the modern world is perceived as the only possible democratic and rational model of local government, one of the integral attributes of our civil society.

Keywords: local self-government; state bodies; state institution; a civil society; a legal state; public authority; democracy.

Problem statement and its topicality. The development of Ukrainian statehood on the principles of democracy has objectively caused a rethinking of the place and role of local self-government in the system of its civil society. The search for a variant of the power model organization that would meet the modern world and European standards was aimed at ensuring human rights, freedoms and legitimate interests. The solution to this problem is possible in the context of the traditions of world philosophical-legal thought, taking into account scientific research and local self-government practices of democratic countries.

Nowadays, there are problems in local self-government that need to be researched and solved, namely: the introduction of a clear division of power between the state and local self-government bodies and the transfer of a significant number of administrative functions to the latter; improving the system and structure of local governments; reducing the total number of territorial communities by uniting them and forming joint bodies; creating an appropriate legal framework; introduction of mechanisms of financial independence of local self-government and regulation of the degree of financial assistance by the state; intensification of participation of the population in the decision of ques-

tions of local value through territorial communities, their representative bodies and bodies of self-organization of the population, etc.

In Ukraine, the issues of local self-government are being studied by scientists. But these studies reflect only some of the problematic sides of the theme. At the same time nowadays, as for their comprehensive development, namely its concept, the system of powers, comprehensive research has not been conducted. These and other circumstances determine the topicality of this paper, its scientific-practical importance for local self-government in Ukraine.

Scientific development of issues related to the concept of local self-government, its nature, and content, its correlation with state power, contributes to the formation of the institution of local self-government. It should be noted that existing scientific publications interpret the concept of local self-government differently, which complicates the understanding of its purpose.

Analysis of recent research and publications.

The study is based on the work of V.P. Bezobrazov, A.I. Vasylychikov, M.M. Korkunov, M.I. Lazarevskiy, S.A. Avakyan, V.B. Averyanov, G.V. Atamanchuk, M.O. Baimuratov, G.V. Barabashev, V.Ye. Brazhnykov, I.P. Butko, A.I. Vasylychikov, V.M. Campo, A.M. Kolodiy, M.I. Kornienko, V.V. Kravchenko, M.O. Krasnov, O.Ye. Kutafin, N.R. Nyzhnyk, R.S. Pavlovskiy, V.F. Pohorilko, M.O. Pukhtynskiy, A.O. Selivanov, M.F. Selivon, Yu.M. Todyka, O.F. Frytskyi, M.V. Tsvik, V.M. Shapoval, Yu.S. Shemshuchenko and others.

Main material. Local self-government in Ukraine originated in the era of Kievan Rus and had a number of periods in its development. Its source can be called a territorial rural community. Community self-government, which was based on production and territorial characteristics, developed on the basis of customary law and manifested itself in the form of an “assembly” [*viche*], which was a meeting of adults, free urban population, convened to address important issues.

With such an organization of self-government, the separation of powers between the prince and the assembly was ordinary. The prince was in charge of the court, administration, the right to impose and collect taxes, legislative policy. At the same time,

in carrying out these functions, he was obliged to take into account the opinion of the assembly (people’s assembly), at which officials were elected, financial questions, issues of war and peace were resolved. But it should be said that the assembly was never a body of democracy because the leading role in it belonged to the wealthy. Although over time, it began to lose the significance that had in a primitive society. However, despite these circumstances, the assembly existed throughout the history of Kievan Rus, and in some lands, its role was very significant. It should be noted that this institution was the prototype of a number of forms of direct democracy, taking into account historical realities [1, p. 11].

Thus, in the Novgorod and Pskov lands, local self-government was first introduced in the 14-15 centuries. Novgorod was divided into five parts, called the ends, and Pskov was divided into six parts. The ends entered the city limits and were divided in turn on streets. At each end, there was a system of self-government, consisting of an assembly and the end’s elder. The streets also had their own assembly and street warden. The mayors of the ends and streets were elected to the council of ends and the assembly of streets, respectively [2, p. 131]. The economic basis of territorial self-government here was corporate ownership, including land. The community independently sets the rules of administration, local taxes, fees and other duties.

During the period of the Grand Duchy of Lithuania, difficult relations were formed between urban communities, the state and city owners, which was determined by the status of a particular city.

In each city, community self-government bodies and bodies representing the interests of the state or the city owner coexisted and shared power. In other words, there was a city body of state power called the elders’ [*starostynska*] administration, headed by an elder [*starosta*], appointed by the central powers.

Senior administrative officer [*wojts*] were elected by a city assembly [*viche*]. In the Grand Ducal cities, the right to self-government was confirmed by special charters of the state. In such cities the castle administration functioned, it was headed by the governor appointed by the owner, or tiun-administrator [*tiun-upravnyk*]. This administration

was in charge of the castle, defense, and tax collection.

Magdeburg law represented the further development of local self-government in Ukraine. It was spread in Ukrainian cities during the Polish-Lithuanian period. The essence of Magdeburg law was to liberate the city from government and the court of state governors and feudal lords and give it the right to establish governing bodies, which were the prototypes of local government. The first city of Ukraine to be granted the Magdeburg right by a charter of Prince Boleslav-Yuriy in 1339 was the city of the Galicia-Volyn principality of Sanok. Later, this right was granted to Lviv (1356), Kamyanets-Podilskyi (1374), Kremenets (1431), Lutsk (1432), Zhytomyr (1444), and Kyiv (1494-1498), Kovel (1518), Pereyaslav (1585), Chygyryn (1592) and other cities.

For the city inhabitants, the struggle to grant them the Magdeburg right was a way to gain considerable autonomy from the state and a legal basis to protect the urban population from the pressure of royal governors and large landowners. And for the central government, exercised by a Lithuanian prince or Polish king, granting a city the Magdeburg right became an important factor in public administration, which made it possible to expand its social base at the expense of the townspeople and put pressure on the feudal aristocracy.

A new stage in the development of local self-government in Ukraine was the signing in 1654 of the Pereyaslav agreement between Ukraine and the Moscow state, which marked the beginning of the gradual elimination of Ukrainian forms of local self-government. At the first stage, Ukraine received confirmation from the Russian tsar that he had not violated the rights to local self-government. Thus, in 1665 the royal decree issued charters to the cities of Ukraine on the Magdeburg right, but gradually this right began to be supplanted. In 1831 it was abolished (in Kyiv it was made by the decree of Nicholas I of December 23, 1834).

Already after the death of Hetman I. Skoropadskyi in 1722, the so-called commandant's system began to be introduced in Ukraine, which provided for the supervision of the activity of local self-government bodies by appointed Russian commandants. After the replacement of magis-

trates' and town hall courts in 1783 by courts "in counties [*povit*] and provinces [*huberniya*]", Empress Catherine II of Russia issued a "Charter of Rights and Benefits to the Cities of the Russian Empire" and "City Regulation", according to which new local self-government authorities were established in all cities and were called city councils [*duma*]. At the same time, local government was divided into: 1) citywide, which bodies were represented by a mayor, general city council [*duma*] and regulatory or six-member city council [*duma*] (an executive body) and 2) estate (merchant, burgher councils [*uprava*], council [*uprava*] of artisans, foreign craft departments, hired servants, workers) [3, p. 13].

At the beginning of the 19th century, new forms of local self-government were formed in Ukraine. Thus, in 1838, Russian Emperor Nicholas I introduced a state of self-government for state and free peasants in the form of rural society. The village society was considered both a grassroots administrative and economic unit, similar to the village community. The village society had a village community, which decided the most important issues of the society, and a village clerk and other officials were appointed.

The zemstvo reform carried out by the Russian emperor Alexander II in 1864 had a significant impact on public life in Ukraine. This reform was carried out in 6 out of 9 Ukrainian provinces. It was held on the Right Bank only in 1912. According to this reform, local self-government bodies were created in the provinces and counties and were called zemstvos, which consisted of zemstvo assemblies (regulatory bodies) and zemstvo administrations [*uprava*] (executive bodies). At the same time, the governor with his office, as a representative of the central government, controlled the activities of zemstvo. The zemstvos had no administrative power, and the governor could overturn any of their resolutions, and in some cases, their activities were limited to economic and cultural-educational (medicine, education, culture, road repairs, etc.).

In 1870 the city reform was carried out. According to it, such local self-government bodies as city councils and councils were created. Unlike the city councils created by the Empress of Russia Catherine II, these councils were elected by the entire

population for 4 years on the basis of property qualifications. The city council consisted of a mayor, council members with the right to vote [*holosnyi*], a chairman of a county zemstvo council, and a representative of a clerical department.

In 1880 the Zemstvo counter-reform was carried out. Changes were made to the electoral system of zemstvos. Now only nobles could elect and be elected, peasants could elect only candidates for the county zemstvo assembly. The powers of the governor, who appointed council members with the right to vote [*holosnyi*] from among the candidates and could overturn any decisions of the zemstvo, were considerably expanded. In 1892, a city counter-reform was carried out, which led to a significant increase in the number of nobles in local self-government bodies and a decrease in the number of representatives of the bourgeoisie.

The February Revolution of 1917 opened new perspectives for the development of local self-government. During this period, the Provisional Government introduced universal, direct, and equal suffrage in the formation of local governments; their structures were formed at the regional level. Instead of governors and other officials of the old system, provincial, city, and county commissioners of the Provisional Government were appointed, who were subordinated to the Minister of Internal Affairs and performed the functions of promoting self-government and control over its activity [4, p. 21].

During the time of the Ukrainian People's Republic (UPR), a new attempt was made to reform local self-government. The general principles of local government were defined for the first time before the creation of the Ukrainian People's Republic by M. Hrushevskyi, who wrote: «There should be no tightness from power to people, so that it does not deceive people, does not impose its will on them but just in accordance with the people's choice!» [5, p. 95].

After the fall of the Directory in 1920, a new stage in the history of Ukraine began that was called the Soviet period. During the Soviet era, all local governments were abolished and replaced by provincial, county, and township [*volost*] councils [*rada*], which were part of a single centralized system of public authorities, which was character-

ized by the subordination of lower bodies to superiors. This was expressed in the binding nature of the decisions of the higher Councils and their executive bodies for the lower Councils, in the dual subordination of their executive committees. Councils were bodies that concentrated several functions in their hands simultaneously: rule-making, executive control. The organization and activity of local councils were carried out in accordance with the principle of party leadership, which meant that the governing of political, economic, and socio-cultural life on the ground was carried out by local party committees.

A new stage in the historiography of the local self-government of Ukraine was the acquisition of independence by our state. With the adoption of the Constitution of Ukraine in 1996, local self-government received constitutional status and became one of the foundations of the constitutional order of Ukraine. Article 7 of the Fundamental Law stipulates that local self-government is recognized and guaranteed in Ukraine. Chapter XI of the Constitution of Ukraine is also devoted to the organization of local self-government.

On May 21, 1997, the Law of Ukraine "On Local Self-Government in Ukraine" was adopted. The ratification by the Verkhovna Rada of Ukraine on November 15, 1997, of the European Charter of Local Self-Government, was important, which also became the legislative foundation for the formation and development of local self-government in Ukraine in accordance with its principles.

Thus, for many years of its development, local self-government has undergone a significant evolution from a rigidly centralized administrative system of government to the beginning of the formation of a modern system of self-government as one of the foundations of civil society.

However, despite the fact that local self-government has a long history and a difficult path of formation, a number of issues remain unresolved. They are related to the lack of a clear legal framework governing the development of local self-government; uncertainty and insufficient delineation of the competence of executive bodies and local self-government bodies. The problem is the lack of material and financial bases of local self-government, insufficiency, and instability of local budget revenues necessary for local self-

government bodies to perform the functions assigned to them. The spheres of delegated powers of executive bodies to local self-government bodies remain unregulated by the law. All this determines to a large extent the declarative nature of local self-government in Ukraine and requires better legislative support for these and other important issues of local self-government.

As a result, the problem of local self-government attracts special attention from legal science. Scientific development of issues related to the very concept of local self-government, its nature, and content, its correlation with the state power, contributes to the formation of the institution of local self-government.

It can be noted that scholars interpret the concept of local self-government in different ways. In general, there are three main theories of local self-government: *state, civil and dualism*.

The *state* theory of local self-government is based on the idea of decentralization of state power, involvement of the territorial collective and its bodies in serving the state. In this case, the source of authority of the territorial team is the state power. The first of these theories is based on the fact that along with the legislative, executive, and judicial branches of government, it is necessary to recognize the fourth branch of government that is the public power. According to the supporters of this theory of local self-government, the community is an institution equal to the state, the community with its customary law arose before the state, and therefore the right of the territorial community to resolve local issues is natural and inalienable.

As for the *civil* theory of local self-government, the main provisions of this theory are based on the principle of recognizing the freedom of local communities to carry out their tasks. This theory is a logical continuation of the theory of natural rights of the free community and the economic theory of local self-government. In this regard, M.M. Korkunov noted that social theory is based on the opposition of the local community to the state, public interests to political, requiring that society and the state know only their own interests [6, p. 483].

The main theoretical provisions on the nature and nature of local self-government, formed by the

above theories, play an important role in shaping further views on local self-government.

One of the most common theories in the modern legal literature is the *theory of dualism* of municipal government, which is also called the public-state theory of local self-government. According to it, municipal bodies, performing certain governing functions, go beyond local interests and, therefore, have to act as a tool of state administration [7, p. 53]. Elected local governments combine the functions of local self-government and state local government.

At the same time, the concept of “local self-government” was considered both in a *narrow* and in a *broad* sense. In a broad sense, a self-governing organization meant a state in the structure of the mechanism of which the parliament acts as a body of self-government, in a *narrow* sense it is understood as its own local self-government. In the 19th century, this term was got by German and Russian scholars, and from Russia it moved to Ukraine. For example, the German scientist G. Jellinek formulated it as any public administration carried out either by persons who are not in the public service, or with their assistance, or not exclusively by them [8, p. 75]. The English scholar J. Redlich defines local self-government as the exercise by local residents or their elected representatives of the powers granted to them by the legitimate authorities or which belong to them under common law [9, p. 5].

If we turn to the definitions proposed and proposed by scientists, they can be divided into three main groups depending on the doctrine on which they are based, namely: 1) the European continental concept, 2) the Anglo-Saxon, 3) the mixed concept. Proponents of the first concept, which considered local government as an integral part of state governing, were I.K. Sveshnikov and some others. Thus, he considered local self-government as the free participation of the population in local administration [10, p. 24]. B.E. Nolde defined the local self-government as a form of state function implementation with the help of independent to some extent individuals and institutions [11, p. 13].

Other scientists, in particular A.D. Gradovskiy, [12, p. 292; 13, p. 12], defined local self-government, based on the Anglo-Saxon concept and supposed that it was an independent activity of

citizens to address issues of local importance. V. Baranchikov gave concepts based simultaneously on the two mentioned above [14, p. 8].

It is necessary to note separately those definitions of the concept of local self-government which are offered by domestic scientists. Thus, Yu.M. Todyka and V.D. Yavorskyi insists that local self-government is a system consisting of a set of democratic organizational forms (elections) and institutions of direct democracy (referenda), other forms of expression of the will of the population of the relevant administrative-territorial unit and elected and other bodies that implement its goals, objectives and functions [15, p. 3].

Conclusions. Legislative definitions of local self-government in Ukraine are determined by the Constitution of Ukraine [16], the Law of Ukraine "On Local Self-Government in Ukraine" [17], the European Charter of Local Self-Government, ratified by the Verkhovna Rada of Ukraine [18], which is the part of national legislation in accordance with Article 9 of the Constitution of Ukraine. And observing the growing trend of the influence of law, its role and importance in the regulation of social relations, as well as in ensuring the stability and efficiency of economic, political and other social systems of society, its value is manifested in a new capacity, according to new conditions, and changes that reflect a new understanding of the place of law in the era of social changes [19, p. 217]. Recent years have brought many shocks that make it impossible to preserve academic detachment when analyzing the cruel events of reality. However, classification of the changes which are happening and happened in the sphere of constitutional law helps us to meet them with open eyes and understanding [20, p. 9]. In all Western European countries, local self-government is seen as the most important component of social governing, a necessary complement and counterbalance to the central government, and is the key to the democratic health of the society... It is impossible to revive local self-government in Ukraine without reforming it, which is a necessary precondition for overcoming the systemic crisis in our country [21, p. 78]. In this regard, it should be noted that the legislative definition of local self-government can not be called unambiguous and final, and reflection in the search

for the truth of this issue is quite perspective nowadays.

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І.Л. Бородин, О.М. Миронець

МІСЦЕВЕ САМОВРЯДУВАННЯ – ІСТОРІЯ І СУЧАСНІСТЬ

Національний авіаційний університет,
проспект Любомира Гузара, 1, 03680, Київ, Україна
E-mails: ivan.borodin@npp.nau.edu.ua, o.m.myronets@ukr.net

Метою статті є через розгляд історіографії місцевого самоврядування та аналіз наукових конструкцій пошук його основоположних елементів, які можна було б запозичити для створення оптимальної моделі даного інституту в Україні та запровадження прогресивних підходів у державотворенні України. **Методи:** історичний, феноменологічний, порівняльно-правовий, соціологічний, формально-логічний, діалектичний. **Результати:** запропонований аналіз історії становлення місцевого самоврядування, його розуміння різними науковцями, представниками різних наукових шкіл, має слугувати розвитку наукової думки в заданій парадигмі, стати, у відповідній мірі, основою для подальшої розробки та вдосконалення законодавства, що визначає і регулює функціонування місцевого самоврядування, як державного інституту, як ознаку зрілої демократії та громадянського суспільства. **Обговорення:** проблема місцевого самоврядування привертає увагу юридичної науки. Це пов'язано з тим, що по мірі розвитку суспільства питання підвищення ефективності та демократизації управління громадськими справами набувають усе більшого значення. Проголошення незалежності України сприяло активізації процесу демократизації суспільства і держави. Важливою складовою частиною цього процесу є побудова оптимальної системи місцевого самоврядування в Україні, яка у сучасному світі сприймається як єдино можлива демократична і раціональна модель влади на місцях, один із невід'ємних атрибутів громадянського суспільства.

На сьогодні в місцевому самоврядуванні є проблеми, які потребують дослідження й вирішення, а саме: впровадження чіткого розподілу влади між державними органами й органами місцевого самоврядування і передачі останнім значної кількості управлінських функцій; удосконалення системи і структури органів місцевого самоврядування; зменшення загального числа територіальних громад шляхом їх об'єднання й утворення спільних органів; створення належної законодавчої бази; впровадження механізмів фінансової незалежності місцевого самоврядування й урегулювання ступеня фінансової допомоги з боку держави; активізація участі населення у вирішенні питань місцевого значення через територіальні громади, їх представницькі органи й органи самоорганізації населення тощо.

Наукова розробка питань, пов'язаних із поняттям місцевого самоврядування, його природою і змістом, співвідношенням із державною владою, сприяє становленню інституту місцевого самоврядування. При цьому слід зазначити, що в існуючих наукових публікаціях по-різному тлумачиться поняття місцевого самоврядування, що приводить до ускладнення розуміння його призначення.

Ключові слова: місьцеве самоврядування; державні органи; державний інститут; громадянське суспільство; правова держава; публічна влада; демократія.