

## THE GERMAN MODEL OF LOCAL SELF-GOVERNMENT: THEORETICAL AND LEGAL ASPECT

### НІМЕЦЬКА МОДЕЛЬ МІСЦЕВОГО САМОВРЯДУВАННЯ: ТЕОРЕТИКО-ПРАВОВИЙ АСПЕКТ

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The article is devoted to the study of the peculiarities of the organization of activities and the exercise of powers by local self-government bodies in Germany. The article examines the main stages and period of formation and development of the system of local (municipal) self-government in Germany. The legal framework of local government in the federal states has been studied and characterized, in particular, the legal regulation of the organization and functioning of local self-government in Germany is carried out in accordance with the municipal constitution and regulations of local self-government bodies, which operates on the territory of each individual federal state, at the federal level a special law on there is no local self-government. It is also determined that in Germany local self-government is carried out in communities (communes), districts and lands. The federal states are relatively independent and autonomous subjects of the Federal Republic of Germany. The article concludes that the effectiveness of the German model of local self-government lies in the active participation of citizens in deciding important decisions for the community. The relationship between local authorities and citizens is based on the principles of trust, equality and partnership, not on the basis of dependence and subordination. The author also suggested that adopting such a positive foreign experience would be useful for the Ukrainian authorities and public representatives in further improving and reforming the organization and functioning of local self-government in Ukraine.

**Key words:** federation, management, federal lands, local self-government, decentralization, delegated powers, commune.

Стаття присвячена дослідженню особливостей організації діяльності та реалізації повноважень органами місцевого самоврядування в Німеччині. У статті досліджено основні етапи та періоду становлення та розвитку системи місцевого (комунального) самоврядування в Німеччині. Досліджено та охарактеризовано нормативно-правову основу місцевого управління у федеральних землях, зокрема, Правове регулювання організації та функціонування місцевого самоврядування в Німеччині здійснюється відповідно до муніципальної конституції та регламентів органів місцевого самоврядування, яка діє на території кожної окремої федеральної землі, на федеральному рівні спеціальний закон про місцеве самоврядування відсутній. Також визначено, що в Німеччині місцеве самоврядування здійснюється у громадах (комунах), округах та землях. Федеральні землі є відносно самостійними та автономними суб'єктами Федеративної Республіки Німеччини. У статті зроблено висновки про те, що ефективність німецької моделі місцевого самоврядування полягає у активній участі громадян при вирішенні важливих рішень для громади. Відносини між місцевою владою та громадянами ґрунтуються на принципах довіри, рівності та партнерства, а не на основі залежності та підпорядкування. Також автором запропоновано перейняття такого позитивного зарубіжного досвіду стане корисним для української влади та представників громадськості у подальшому вдосконаленні та реформуванні організації та функціонування місцевого самоврядування в Україні.

**Ключові слова:** федерація, управління, федеральні землі, місцеве самоврядування, децентралізація, делеговані повноваження, комуна.

**Statement of the problem.** In all developed democratic states of the world, one of the priority directions of state policy is the formation of an effective and efficient system of local self-government. The World Declaration of Local Self-Government [1] and the European Charter of Local Self-Government [2] of 1985 established the principle of local self-government and international standards of local organization and management. Germany, as a member state of the Council of Europe, joined the European Charter of Local Self-Government, and therefore, is obliged to comply with the established European standards. At the same time, these international legal documents do not limit the state's right to form its own national model of local self-government, taking into account its own territorial characteristics and traditions.

In this regard, in our opinion, it is relevant to study the experience of the German model of local self-government, which is an example of a combination of the federal system of the state and the continental system of local self-government. Since the consolidation of the democratic system of the state and federalism, which are based on the provisions of the Basic Law, determined a sufficiently wide scope of competence of local self-government bodies.

**Processing status.** In domestic legal science, the peculiarities of local self-government in Germany were studied by such scholars as S.K. Bostan, M.O. Voronov, V.P. Hrobova, A.A. Donetsk, K.O. Zakomorna, A.Yu. Klyuchkovich, O.M. Kolodiy, A.I. Kudryachenko, O.V. Lutoi, O.A. Major, K.A. Markov, Y.V. Melnyk, O.Yu. Neumann, N.G. Pigul, V.D. Roman, Ya.O. Chornohor, I.V. Yakovyuk and others.

**The purpose of the article** is to study the peculiarities of the organization of activities and exercise of powers by local self-government bodies in the Federal Republic of Germany.

**Presentation of the main material.** Germany is a country with a developed democratic power structure and a wide range of powers of local self-government bodies. The continental (Romano-Germanic) system of local self-government is widespread in this country, the specificity of which is a combination of local self-government bodies (communal (local) representative bodies) and state management bodies. At the same time, taking into account the federal system of Germany, the specified system is endowed with certain features. In particular, in the federal lands (subjects of the federation) the local authorities, which implement general state policy on the ground, have been transferred [3, p. 199].

The development of the system of local (communal) self-government in Germany dates back to the Middle Ages. In particular, the institutional organization of community life in a German city had the following structure: a chairman (an elected official) and a general assembly of citizens (persons who were given the right to vote). Important decisions were made at the general meeting, including the use and maintenance of public property, punishment of violators of public order. The main task of the chairman was to conduct current affairs of the community. At the same time, non-German cities differed in their status depending on how the central government supervised the implementation of transferred privileges (authorities of local self-government bodies). The representative body of citizens was the city

magistrate or the city council, consisting of the burgomaster and other members. The magistrate was under the supervision and control of the merchant guild, as well as under the control of the central government. The legal basis of management was municipal law. The sources of which were, first of all, the city charters, which fixed the tasks, the scope of powers and the structure of the city government, as well as the basic rights and responsibilities of the city's residents. The main tasks assigned to the city government included: maintaining peace and order, protecting city residents, administering justice, collecting taxes and other fees, supporting trade and industries, caring for the poor and sick, organizing military service, and others [4, c. 251].

During the period of absolute monarchy in Germany (XVII–XVIII centuries), the development of local (communal) self-government was marked by a confrontation between the power of territorial rulers (princes), on the one hand, and cities, on the other. Local administration in the era of absolute monarchy can be characterized as “police-state”, which, being active and comprehensive, penetrated into all spheres of public life, including spheres of freedom and property of citizens [5, c. 31].

Countdown of the modern history of local self-government in Germany begins with the 19th century. The specified period is characterized by the successive creation of a liberal legal state based on the principles of constitutionalism and legality. The development of local self-government in the territorial units of federal lands (subjects of the federation) during the period of the constitutional-liberal state took place under the motto of “communal self-government” as a symbol of civil freedom [3, c. 199]. The modern model of self-government in Germany was formed during the urban reform in Prussia, the main ideologist of which was Baron G.F.K. von Stein, who became the main developer of the Prussian local statute of 1808. He developed the idea of democratization of public administration, starting from the communal level [6, c. 107].

It should also be noted that the unification of East Germany (German Democratic Republic) and West Germany (Federal Republic of Germany) in the 1990s was of great importance in the development of the German model of local self-government. Such unification took place in the order of “absorption”, spreading the legal and political system of the Federal Republic of Germany to the former GDR. This process facilitated the establishment of local self-government in the territories that were part of East Germany.

Modern Germany consists of 16 federal states that are part of the federation. Federated lands, in turn, are divided into districts; districts, which include several communities; cities are equated to districts (with more than 20,000 inhabitants); large cities (with a population of more than 100,000 inhabitants) and communities/communes (with a population of up to 20,000 inhabitants) [7]. The Basic Law of the Federal Republic of Germany provides communities with the right to regulate all local issues within the limits of the law and under their own responsibility. In accordance with the provisions of the second part of Article 28 of the Basic Law, a representative body is created by the people on the basis of general, equal, direct and secret elections in communities and communes... The right of communities to regulate all community affairs under their responsibility must be ensured within the limits of the law” [8].

The functioning of local authorities in Germany has been transferred to the federal states. The latter independently determine the procedure for holding communal elections and adopt the communal constitution. This actually indicates that the state transfers part of its own functions to local self-government bodies. According to V.G. Padalko normative legal regulation of communal self-government in Germany has two features: on the one hand, it is characterized by the concentration of most legislative acts at the level of the federation with a strong influence of the lands through the land governments, and on the other hand, by the decentralization and deconcentration of administrative functions at the land level and within

the borders of the lands – on levels of communal self-government [9, p. 125]. The legislation of the Federal Republic of Germany provides for the active cooperation of local self-government bodies with representative bodies of the central government, which has features such that although the lands perform the functions of the central government, they, in turn, are endowed with decentralization and independence [5, p. 32].

Federal states in Germany have their own constitutions. In this regard, representatives of German jurisprudence developed the doctrine of constitutional autonomy of the federal states. According to this concept, states have the right to regulate their own social, legal, economic and cultural life by adopting constitutions. German jurists characterize the federal states as “constitutional” [10].

Tasks implemented by local authorities can be divided into two groups: own powers and delegated powers [11, c. 132]. Mandatory and voluntary powers must be attributed to the own powers of local self-government bodies. Mandatory are established by law (as a rule, these issues are related to the operation of city buildings, urban planning, supply of drinking water, etc.). When solving these issues, communities cannot refuse to solve them, but they have freedom of choice in the ways of their implementation. As for the voluntarily undertaken obligations of the community, they may include the construction of social and cultural facilities (gyms, museums, theaters), etc.

When the community performs delegated powers on behalf of the state. This is, first of all, solving issues of protection against natural disasters, maintenance of public order, etc. By implementing delegated powers, the local government acts as a management body, which is included in the solution of national tasks. As long as the assigned tasks are of a state nature, the state has the right to instructions that are mandatory for implementation. It is important to note that in this case, the state is entrusted with the responsibility of financing the implementation of tasks of national importance, which are set to be implemented by the relevant community. Within the scope of the delegated powers, branch supervision is carried out in order to ensure their full and proper implementation. The authorized bodies of industry supervision have the right to demand the necessary information.

As mentioned, local self-government in the federal states of Germany is carried out in communities (communes), districts and districts.

The commune is the main constituent element of the entire mechanism of local self-government in Germany. The definition of “self-government” in Germany means communal (local) self-government. First of all, it should be noted that Germany has not adopted a federal law on local self-government, and the already mentioned Article 28 of the Basic Law contains only a provision according to which communes are given the right to regulate all local community affairs within the limits of the law under their responsibility [12]. Communes (communities) are the basic unit of political and territorial organization of lands. They can solve any tasks of public authority, except for cases when it is assigned to the competence of another body by a special order of the law in the public interest [3, c. 202]. Similar to the legal status of communities is the status of public unions. The right of communities and their unions to self-manage their affairs is guaranteed by the state, which, in turn, supervises exclusively the compliance of such management with federal laws [13, p. 43]. Despite the different approaches to the legislation on local self-government that exist in different German states, in fact, in all states, self-government is quite developed, and more than 80% of issues when a citizen has relations with the government are resolved in communities [14].

The districts are de facto administrative units and occupy an intermediate position between the ministries of the federal states and the districts. According to the Basic Law of the Federal Republic of Germany, districts are defined

as associations of communes. Several communities are part of the districts. Districts are considered as a body that is part of the system of local self-government bodies, as well as a lower body of state administration. Some scientists claim that the essence of the district as a territorial entity lies in its trinity: it is at the same time a set of territorial bodies of the land, a local self-governing community and a union of its constituent communities. In the district, the population elects a representative body – the district assembly. The structure of the district executive power and its relationship with the district assembly in all, but in all lands, the head of the district executive power is the head of the state administration of the respective district. A specific field of activity is not fixed for the districts, at the same time, they are the subjects of providing social assistance, are responsible for the construction of roads of district significance. In those cases when communities cannot cope with solving problems on their own, districts provide them with the necessary assistance. In addition, the state can involve the executive power of the district to solve national tasks. Therefore, many German researchers consider the powers of districts as “compensatory” [15].

The peculiarity of local government in Germany also lies in the active interaction of local government and citizens. As J.O. justifiably points out. Montenegro should look for the positive content of the confrontation between state and public concepts of local self-government precisely in guaranteeing the opportunities of territorial communities, their legal protection against encroachment by the state authorities. And the example of the functioning of local self-government in Germany is a vivid confirmation of the possibility of combining the efforts of state authorities and citizens. After all, the effectiveness of the institution of local self-government, to a greater extent than the effectiveness of the state, is determined by the degree of participation of citizens in it. The functioning of active, civic and effective local self-government is necessary. In addition, modern management technologies make it possible to make cost-effective decisions in the conditions of small communities [3, c. 204].

In addition, a positive aspect of the German model of self-government is an effective system of financial support for local authorities. According to V.P. Hrobova, one of the main financial guarantees of local self-government in Germany is a balanced and diversified financial system, according to which each level of territorial organization of government has its own source of income, which is sufficient for the financial autonomy of the corresponding territorial entity. Incomes

of territorial entities are formed at the expense of taxes and fees, income from economic activity, state transfers, loans, payments for services rendered, etc. At the same time, the own taxes of communities are land and industrial tax, which are collected exclusively by communes; the amounts of these taxes are set annually by the councils of the commune. The laws of the federal lands may also provide for the right of communities to impose taxes and levies on consumption (a tax on performances, on motor boats and boats, a levy on dog and horse owners, a levy on hunting and fishing, a targeted tax for the maintenance of the fire department, etc.). In general, if the federal budget receives about 45% of all tax revenues, the land budget receives 37%, the community budget receives about 13% of tax revenues [5, p. 33].

Therefore, the formation and development of the German model of local self-government took place through greater democratization and raising the status of communal (local) self-government in the entire system of state power in Germany. In our opinion, local self-government in Germany effectively fulfills the tasks assigned to it. This is confirmed by the activity and indifference of the local population in the adoption and implementation of decisions made by local authorities.

**Conclusions.** The study of the model of local self-government of the Federal Republic of Germany allows us to draw the following conclusions. In Germany, local self-government is carried out in communities (communes), districts and lands. The federal states are relatively independent and autonomous subjects of the Federal Republic of Germany. The legal regulation of the organization and functioning of local self-government in Germany is carried out in accordance with the municipal constitution and regulations of local self-government bodies, which is valid on the territory of each individual federal state, there is no special law on local self-government at the federal level.

In our opinion, the German model of local self-government is rightly considered one of the strongest and most effective on the European continent. The effectiveness of the German model of local self-government lies, first of all, in the active participation of citizens in deciding important decisions for the community. The relationship between local authorities and citizens is based on the principles of trust, equality and partnership, not on the basis of dependence and subordination. In our opinion, adopting such a positive foreign experience will be useful for the Ukrainian authorities and public representatives in the further improvement and reform of the organization and functioning of local self-government in Ukraine.

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