



# POLSKI INTERDYSCYPLINARNY PRZEGLĄD NAUKOWY

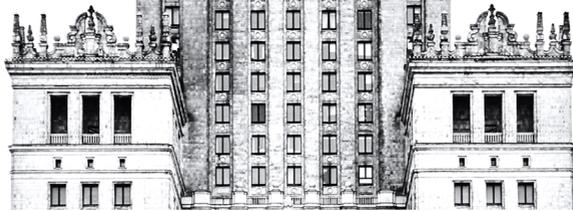
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# Procedure of voluntary association of territorial communities in Ukraine

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## Summary

The article is focused on the reform of local self-government in Ukraine in order to decentralize municipal power. The authors of the article have studied some papers of the following authors: M. Baimuratov, O. Batanova, V. Hryhoriev, U. Dudka, N. Kaminska, A. Oliynyk, V. Pohorilko, O. Stohova, O. Frytskyi, A. Shevchenko. The authors have suggested the features of the procedure for association of territorial communities in Ukraine: a) regulation by the norms of the law; b) initiating a voluntary association; c) preparation of draft decisions on association; d) decisions on a voluntary association; e) formation of an association; f) reorganization of local self-government agencies. The authors have formulated the definition of the procedure of association of territorial communities in Ukraine as regulated by legal norms of initiation of voluntary association of territorial communities, preparation of draft decisions on such association, adoption of appropriate decisions and formation of the said voluntary association, as well as the process of reorganization of local self-government agencies.

The stages of the procedure of association of territorial communities in Ukraine are: 1) initiation of a voluntary association of territorial communities; 2) the procedure for preparing draft decisions on a voluntary association of territorial communities; 3) preparation of decisions on a voluntary association of territorial communities; 4) formation of a united territorial community and reorganization of local self-government agencies.

**Key words:** territorial communities, voluntary association, procedure of voluntary association, system of local self-government, decentralization, local self-government.

Decentralization processes in Ukraine are related to the improvement of constitutional and legislative regulation of local self-government and its system. Legal regulation of the stated problem is carried out by the norms of international law, constitutional and legislative legal norms. The study of the procedure of a

voluntary association of territorial communities in Ukraine has theoretical and practical significance. Theoretical significance of researching the problem is to study the works of the authors on the problem and to formulate conclusions on improving the organizational and financial independence of territorial communities. Practical significance of this problem involves the improvement of the implementation of decentralization and municipal public authority in practice.

The issue of the latest research on local self-government reform concerns the components of the local self-government system, improvement of legal regulation of a voluntary association of territorial communities, propositions of conclusions and recommendations on the procedure of association of territorial communities in Ukraine. The authors who studied those issues include the works of: M. Baimuratov, O. Batanov, V. Hrihoriev, U. Dudka, N. Kaminska, A. Oliynyk, V. Pohorilko, O. Stohova, O. Frytskyi, A. Shevchenko and others. The procedure for voluntary association of territorial communities in Ukraine has not been studied yet.

The purpose of the research is the procedure of voluntary association of territorial communities in Ukraine. To achieve this purpose, it is necessary to solve the following tasks: a) to analyze international and national legal norms regulating the elements of the system of local self-government and their scientific research; b) to formulate the features, definitions and stages of the procedure of association of territorial communities in Ukraine; c) to offer conclusions and recommendations in regard to the research topic.

The problem of reforming local self-government primarily concerns the improvement of legal regulation of its system. According to the European Charter of Local Self-Government, where local self-government is defined as the right and ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population (the Art. 3)<sup>23</sup>. The Constitution of Ukraine stipulates that local self-governing as the right of a territorial community – residents of a village or a voluntary association of residents of several villages into one village community, residents of a settlement, and of a city – for the purpose of an independent settlement of issues of local charter in compliance with the Constitution and laws of Ukraine (the Art. 140)<sup>24</sup>. International norms and norms of the Constitution of Ukraine regulate local self-government and its system as the right and ability of a territorial community and local authorities within the limits of the law to regulate and manage a significant share of public affairs, under their own responsibility, in the interests of the local population. Making the constitutional norm of the Law of Ukraine dated from May 21, 1997 „On Local Self-

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<sup>23</sup> European Charter of Local Self-Government of 15.10.1985 № ETS N 122 / URL: [http://search.ligazakon.ua/l\\_doc2.nsf/link1/MU88002H.html](http://search.ligazakon.ua/l_doc2.nsf/link1/MU88002H.html)

<sup>24</sup> The Constitution of Ukraine of the Verkhovna Rada of Ukraine on 28 June 1996 Article 141.

Government in Ukraine” more concrete, it stipulates that local self-government in Ukraine is a state-guaranteed right and real ability of a territorial community – residents of a village or voluntary association of residents of several villages into one village community, residents of a settlement, and of a city – independently or under the responsibility of agencies and officials of local self-government to solve issues of local significance within the limits of the Constitution and laws of Ukraine (the Art. 2)<sup>25</sup>. It should be noted that the Constitution and the mentioned Law of Ukraine enshrine such a subject of local self-government as a voluntary association of residents of several villages, settlements and cities that corresponds to the organization of cooperation of two or more territorial communities on a contractual basis<sup>26</sup>. The Law of Ukraine dated from February 5, 2015 “On Voluntary Association of Territorial Communities” introduces another subject of local self-government system, namely: voluntary association of territorial communities of villages, settlements, cities. The law stipulates that a united territorial community, the administrative center of which is a city, is an urban territorial community, the center of which is a settlement – as a settlement, the center of which is a village – as a rural<sup>27</sup>. Thus, the enshrinement of voluntary association of territorial communities of villages, settlements, cities by the Law of Ukraine dated from February 5, 2015, in our opinion, requires clarification of the norms of the Art. 140 of the Constitution of Ukraine and the Art. 2 of the Law of Ukraine dated from May 21, 1997 “On Local Self-Government in Ukraine” by changing the terms of “settlements and cities” to the terms of “rural settlements and cities”. Such clarification, in our opinion, will help to improve the legal regulation of such a subject of local self-government as a voluntary association of territorial communities of residents of several villages, settlements and cities, which can be characterized as a territorial group.

M. Baimuratov, V. Pohorilko, O. Frytskyi, having analyzed the concept of territorial community, emphasize that local self-government primarily acts as an expression of self-organization, initiative, self-discipline of citizens (residents of a certain territory), its formation as an integrated system within the whole society, if necessary, should primarily take place at its lower levels, in the primary cells. In this regard, the main producer of the interests in the system of local self-government is the local community, defined as a territorial group (community). The concept of “territorial group” is relatively new to the legal science of Ukraine, which has not received both unity of opinion in science and legislative definition. This term does not appear in the Basic Law of Ukraine or in the Law of Ukraine “On Local Self-Government in Ukraine”<sup>28</sup>. Thus, the legislative consolidation of the

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<sup>25</sup> Law of Ukraine "About local self-government in Ukraine" of 21.05.1997 Article 170.

<sup>26</sup> Law of Ukraine “On Local Community Cooperation” of 17.06.2014 Article 1167.

<sup>27</sup> Law of Ukraine “On Voluntary Association of Territorial Communities” of 05.02.2015 Article 91.

<sup>28</sup> Pohorilko V., Frytskyi O., M.O. Baimuratov M., Municipal law of Ukraine: Jurinkom Inter, 2001. p. 115-119

territorial group will contribute to the improvement of the practical implementation of the formation and activity of the voluntary association of territorial communities.

Thus, O. Batanov, studying the place and role of territorial communities within the system of local self-government, emphasizes that the formation of effective local self-government in modern Ukraine is largely constrained by the result of objective (for example, weak financial and economic base) and subjective factors, such as the presence of contradictory and sometimes diametrically opposed approaches to understanding the real nature, functions and tasks of local self-government. Therefore, due to the novelty of the institution of local self-government for the constitutional and legal mechanism of public authority in Ukraine, there is a current need for thorough scientific and legal development of issues concerning the nature, foundations, principles of organization and operation of local self-government. Issues in regard to the place and role of the territorial community in the system of local self-government are of particular attention in the process of formation of the domestic theory of local self-government. Although there is no doubt about the issue on the special role of these communities in the implementation of tasks and functions of local self-government in the legal literature, but the problems of constitutional and legal status of territorial communities, including the concepts regarding the definition, types, forms of activity, basic functions of territorial communities, etc. have not been studied in general. There is no fundamental research on these issues within the science of constitutional law, which to some extent slows down the implementation of legislation on local self-government in Ukraine<sup>29</sup>. Thus, O. Batanov emphasizes the lack of research of such a subject of the system of local self-government as a territorial community and voluntary association of territorial communities in the process of their reform and decentralization in order to implement municipal public power.

V. Hrihoriev studies public municipal power and believes that the formation of a modern approach to the constitution of public self-government (municipal) power is inextricably linked with the democratization of state and public life, with the development of civil society and the rule of law in Ukraine that leads to self-limitation of state power and recognition, legalization of other, non-state interests by the state, which produce local communities. The foreign policy aspect of the problem also deserves attention. Ukraine's accession to the Council of Europe – the continent's largest international intergovernmental organization – has led to the implementation of a number of commitments made during the signing of international framework agreements developed by Member States of this organization, including in the field of formation and development of local self-

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<sup>29</sup> Batanov O., Territorial community - basis of local self-government in Ukraine: monograph. Institute of State and Law. V.M. Koretsky National Academy of Sciences of Ukraine, 2001. p. 260

government on the own territory. The most important of them, which have the nature of fundamental principles of organization and functioning of local self-government, were enshrined in the European Charter of Local Self-Government of 1985 and have the character of international standards of constitution of municipal democracy, public self-government (municipal) power<sup>30</sup>. Thus, V. Hryhoriev emphasizes the development of local self-government in the administrative and territorial unit of the territorial group (community) and the united territorial community in relation to the implementation of municipal power in the context of decentralization of state and public life.

U. Dudka, studying the state, problems and perspectives of local self-government's development in rural areas, emphasizes that local self-government in Ukraine in accordance with the norms and rules of legislation should strengthen the principles of the constitutional system, ensure the implementation of constitutional human and civil rights, to create conditions for the satisfaction of the population with vital needs and legitimate interests, as well as to develop local democracy. However, the effectiveness of local self-government of most territorial communities can be questioned, because it does not create and maintain vital conditions that would ensure comprehensive human development, would provide quality and accessible social, administrative and other services, and, accordingly, it does not contribute to the sustainable development of communities. Especially it is about rural communities. In his opinion, it is not possible to improve the quality of providing state-guaranteed quality social and administrative services for the members of territorial communities, especially rural and urban, due to the large fragmentation of territorial communities, lack of own development opportunities, aging population, significant outflow of economically active part of the community to large cities or outside Ukraine. U Dudka also believes that local self-government agencies are responsible for providing such services according to the current territorial and legislative basis. Local self-government agencies do not have enough authority, experience, and funding. To solve the problems of local self-government in rural areas it is necessary: to create appropriate logistical, financial and organizational conditions that will ensure the implementation of their powers by local self-government agencies; to differentiate the powers of executive agencies and local self-government under the principle of subsidiarity and on the basis of decentralization of power; to introduce a reasonable territorial basis, where local self-government agencies and executive agencies will be able to function in order to provide affordable and quality services; to involve the population in solving local

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<sup>30</sup> Hryhoriev V., Formation of public self-government in Ukraine: Thesis. Cand. Sc. (Jurisprudence): 12.00.13. Odessa, 2002.

problems; to promote the development of democracy<sup>31</sup>. Thus, U. Dudka believes that it is necessary to voluntarily unite rural territorial communities into a territorial community with a common administrative center in order to increase the efficiency of local self-government of rural territorial communities.

N. Kaminska understands the territorial community as the territorial basis of local self-government – a village, settlement, city<sup>32</sup>. Thus, the administrative and territorial basis in Ukraine is a village, settlement, city (territorial community or basic level), district and ARC, region (regional level).

A. Oliinyk emphasizes that local self-government, among other functions, performs the function of protection and defense of the rights, freedoms and legitimate interests of individuals, ensures constitutional freedoms directly through territorial communities (through local referendums, general meetings, etc.) and through rural, settlement, city (district in cities) councils, their executive agencies and officials, as well as through district and regional councils, which represent the common interests of territorial communities of villages, settlements, cities. One of the areas of improving the activities of local self-government and its agencies and officials to ensure the constitutional freedoms of a man and citizen is the association of territorial communities (ATC) in accordance with the Law of Ukraine dated from February 5, 2015 “On Voluntary Association of Territorial Communities”<sup>33</sup>.

O. Stohova, having studied the reform of the administrative and territorial system of Ukraine as part of the decentralization process, concludes that the prerequisite for this reform is the need to unite territorial communities to create self-sufficient basic units of territorial organization, which should become a real basis for local self-government. The process of unification of territorial communities has been going on in Ukraine since 2015. The next stage of decentralization should be the adoption of a law regulating the administrative and territorial system of Ukraine<sup>34</sup>. Thus, O. Stohova considers the reform of voluntary association of territorial communities in order to increase their ability to exercise municipal power and to ensure human and civil rights and freedoms at the level of local self-government as part of the process of decentralization of municipal power in Ukraine.

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<sup>31</sup> Dudka U., Local self-government of rural areas: state, problems and prospects of development. Separated Subdivision of National University of Life and Environmental Sciences of Ukraine. Berezhanıy Agrotechnical Institute

<sup>32</sup> Kaminska N., European system of local and regional self-government and Ukraine: monograph. Kyiv, 2012. p. 413

<sup>33</sup> Oliinyk A., Constitutional freedoms of citizen and their provision in Ukraine: monograph. Kyiv National University of Technologies and Design, 2018. p. 274, 277

<sup>34</sup> Stohova O., Administrative and territorial reform in Ukraine as part of the process of decentralization. Modern society. 2017. № 2. p. 207-217

A. Shevchenko defines a territorial community as a set of residents united by permanent residence within a village, settlement, city as independent administrative and territorial units or a voluntary association of residents of several villages that have a common administrative center<sup>35</sup>.

As a result of studying the works of authors concerning the procedure of association of territorial communities in Ukraine we can formulate features, definitions and stages of such procedure of association. Features of the procedure of association of territorial communities in Ukraine are: a) regulation by the norms of the law; b) initiating a voluntary association; c) preparation of draft decisions on an association; d) decisions on a voluntary association; e) formation of an association; f) reorganization of local self-government agencies.

The stages of the procedure of association of territorial communities in Ukraine are: 1) initiation of a voluntary association of territorial communities; 2) the procedure for preparing draft decisions on a voluntary association of territorial communities; 3) preparation of decisions on a voluntary association of territorial communities; 4) formation of an association of territorial community and reorganization of local self-government agencies<sup>36</sup>.

Conclusion. Summing up the conducted research, we offer the following conclusions and recommendations. The procedure for association of territorial communities in Ukraine is the initiation of voluntary association of territorial communities regulated by legal norms, preparation of draft decisions on such association, adoption of appropriate decisions and formation of the said voluntary association and the process of reorganization of local self-government agencies.

As a recommendation, we offer to clarify the provisions of the Art. 140 of the Constitution of Ukraine and the Art. 2 of the Law of Ukraine dated from May 21, 1997 "On Local Self-Government in Ukraine" by changing the terms of "settlements and cities" with the terms of "rural settlements and cities". The clarifications offered in the text will help to improve the legal regulation of voluntary association of territorial communities of the residents of several villages, towns and cities as a territorial group.

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<sup>35</sup> Shevchenko A., Legal nature and status of the territorial community. Scientific Journal of the National Academy of Internal Affairs. 2017. № 3. p. 332-342

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