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The Role of Local Self-Government Authorities in Implementing the National Policy of the Information Society Development in Ukraine: Conceptual, Organisational and Legal Aspects

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ABSTRACT

The article investigates the role of local self-government authorities in the implementation of the national policy of the information society development in Ukraine. Unfortunately, the situation in Ukraine (since 2014) has affected to a large extent the implementation of the basic principles of the information society development in Ukraine. The results expected in 2015 have not been fully achieved. The agencies of state power and local self-government authorities, and the society intend to enhance the implementation of the basic principles of the information society development despite the difficult political, economic and military situation in the country. However, in Ukraine the processes of building a modern European model of local self-government occur that would contribute to the further implementation of the democratic principles of decentralization and public administration. The article focuses on the prospects of the approach concerning the use of the information society potential in the activities of local self-government authorities in Ukraine which undergo reforms.

It has been grounded that local self-government authorities of Ukraine are the actors involved in the implementation of the national policy of the information society development in Ukraine by interacting with the other participants to achieve the relevant strategic objectives. The basic concepts of the implementation of the said policy in the development of the information society and media state by local self-government authorities have been determined and investigated. It has been determined that local self-government authorities should implement comprehensive management, public-service and IT functions for achieving the strategic goals of the state policy. The authors have investigated the organizational and legal foundations of local self-government as the subject of realization of the said policy, taking into account four types of information-oriented state: civilized, public service, electronic and information. It has been established that these organisational and legal foundations should make the efficient organisational and legal basis for further implementation of the modern European model of local self-government and the mechanism of organisational and legal support for the information society development in Ukraine.

Keywords: Local self-government authorities, subject of the national policy, information society, concept, management, public service, information functions, power, organisational and legal foundations.

1. INTRODUCTION

At the present stage, many countries are experiencing the rapid development of the information society that is a prerequisite for the evolutionary transition to the next stage of its development – the knowledge society. Ukraine has also opted for a change in this direction that is confirmed by, inter alia, the provisions of the Law of Ukraine “On the Basic Principles for the Development of an Information-Oriented Society in Ukraine for 2007-2015”, which determines the development of the information society in Ukraine and the introduction of the latest information and communication technologies (hereinafter–ICTs) in all spheres of public life and the activities of the agencies of state power and local self-government authorities as one of the priority directions of the state policy. At the same time, it was recognized in terms of legislation that despite certain achievements in the creation of the basic foundations of the information society in Ukraine, the degree of its development, in comparison with the global trends, is insufficient, and does not correspond to the potential and opportunities of Ukraine. This issue gains a particular importance within the strategic course of Ukraine’s Euro integration (Zapara S.I., 2016).

At the moment, there is compelling evidence for the above situation, for instance: 1) the process of creating infrastructure for the provision of information services to legal entities and private individuals with the use of the Internet by government bodies and local self-government authorities is slow; 2) the level of computerization in specific sectors of the economy and in some regions of the country is low; 3) inconsistency of regulations that does not contribute to the formation of systematic legal framework of the information society in Ukraine; 4) increasing social and economic inequality between Ukraine and the developed countries because of significant differences in the rate of growth of volume and range of the goods and services produced and provided through the information and communication technologies. This, in turn, negatively affects the competitiveness of Ukraine and the living standards of people.

It should be noted that even a decade ago (in 2007) the particular focus was placed on the need to solve the above problems, first and foremost, by joining the harmonious efforts of the government, society, local authorities, trade unions, business and citizens of Ukraine. Unfortunately, the situation in Ukraine (since 2014) has affected to a large extent the implementation of the basic principles of the information society development in Ukraine: the results expected in 2015 have not been fully achieved. Realizing

the importance for Ukraine to advance on the path of the information society development (despite the difficult political, economic and military situation in the country), the agencies of state power and local self-government authorities, and the society intend to enhance the implementation of the basic principles of the information society development. Considering the fact that science is becoming one of the main factors that contribute to the proper implementation of these principles, our article focuses on the initiative to conduct legal researches on determining the role and place of local self-government authorities in the further development of information society in Ukraine. Initially, there was a quite lenient approach towards the administrative authorities when assessing the general principles, which showed an effort to protect the authorities' freedom of choice, for reasons of effectiveness of the European legal system (Simonati, 2011).

2. RESEARCH METHODOLOGY

The article focuses on the position regarding the expediency of the development of methodological pluralism in jurisprudence, meaning that the possibility determined to use different methods would contribute to finding a common denominator enabling to ensure the progress of scientific knowledge due to the absorption of its strengths. However, we believe that this does not exclude the prevalence of individual methods that is currently evidence-based determinant in specific researches. Proceeding from the fact that the general methods (dialectic, synergetic, systematic) constitute the world view foundation of all sciences, including jurisprudence, and the systematic method (approach) is considered to be crucial in learning the phenomena of state and law, the other methods, such as logical-semantic, historical and legal, comparative-legal, analysis and synthesis, statistical and technical, were used during the research.

The knowledge obtained from the works of the Ukrainian and foreign scientists (names and references to which are given throughout the research) of the scientific branches of the general theory of law and state, theories of public administration, constitutional, administrative and information law was constructively used in the article. According to present knowledge, there are no comprehensive scientific works on the analysis of the activities of local self-government authorities as the actors involved in the implementation of the national policy of the information society development in Ukraine. We believe that the authors' study of this problem can promote, to a certain extent, both the deepening of the methodology of legal research on local self-government authorities in Ukraine in terms of their reforming, and enriching of the fundamental organisational and legal framework for the information society development in Ukraine. Let's try to prove it in the course of our research.

3. RESULTS AND DISCUSSION

We consider it necessary to begin with the definition and analysis of the conceptual framework, namely the concepts "local self-government authorities" and "information society".

According to article 140 of the Constitution of Ukraine, local self-government is the right of any territorial community – residents of village or voluntary amalgamation of residents of several villages, towns and cities in rural community – to resolve issues of local importance independently within the Constitution and laws of Ukraine. Local self-government is carried out by territorial community under the procedure established by law, both directly and through local self-government authorities: village, settlement and city councils and their executive bodies. Local self-government authorities, which represent common interests of territorial communities of villages, towns and cities, are district and regional councils. The issues of organizing governance of districts in cities belong to the competence of city councils.

The above structure has become a logical continuation of the ideology of “strong government” because involves the use of “strong” administrative control mechanisms. Article 21 of Universal Declaration of Human Rights provides for the following provision “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives..... The will of the people shall be the basis of the authority of government” (hereinafter – the Declaration). This formula is embodied in Article 21 of the Declaration. The mechanism of implementing this formula is envisaged by the provisions of the Worldwide Declaration of Local Self-Government (Paragraph 1 of Article 2), pursuant to which “local self-government denotes the right and the duty of local authorities to regulate and manage public affairs under their own responsibility and in the interests of the local population”.

However, the European Charter of Local Self-Government includes the provisions pursuant to which the local self-government denotes “the right and the 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”.

Ukraine has a bit different formula. The only source of power in Ukraine is nation. According to the second Chapter of the Declaration of State Sovereignty of Ukraine “Only the Verkhovna Rada of the Ukrainian SSR can represent all the people. No political party, non-governmental organization, other group or individual can represent all the people of Ukraine”. Thus, the deputies of local councils do not exercise power on behalf of all the people, as they represent only the interests of a particular territorial community. However, V. S. Kuibida has aptly noted that “local government is not understood as the alternative to a strong state power. The developed local self-government is a sign of a strong state. Ensuring the sustainment at the local level, local self-government contributes to the preservation and strengthening of the state during the period of international crises. In the periods between crises, the local self-government plays a stabilizing role in the development of the state, ensuring the provision of local services and alleviating the general social tension in society.” (V. Kuibida, 2004). This situation is aggravated by the fact that in Ukraine, along with local councils, there are regional and district administrations, which have the real local authority, and at the same time limit the powers of representative bodies.

After the Revolution of Dignity (2013-2014), when Ukraine confirmed its European vector of the development, there were the preconditions for reforming its public administration system and departing from the situation when the state creates the conditions for constant interference in the activities of local self-government at the legislative and executive levels. We believe that the reforming of local self-government should be carried out taking into account the achievements of the modern European model of public governance of a state, in particular, “good governance” and achievements of the information society.

The actual ability of authorities to act under their own responsibility and in the interests of the local population should become one of the important vectors of the local self-government development. Our invincible belief is that the responsible activities of local self-government authorities could become reality unless and until the adequate administrative services are provided in the open information society.

It will be recalled that the information society is the philosophical concept that means the highest level of the society development where not material wealth, but information, is a priority value. By the way, Y. Hayashi was the first to use the concept “information society”. Later, the term was used in the works

of F. Machlup (1966, USA) and T. Umesao (1963, Japan). By the way, in the beginning of the 20th century D. Bell drew attention to the fact that the core feature of the post-industrial society was the dominance of science and scientific knowledge. Finally, in 1993 the Commission of the European Union (hereinafter – EU) defined the concept of “information society” as the society in which human activity is based on the use of the services provided via information technologies and communication technologies. Over the years, this definition has been modified, and the European Commission has considered the essence of the information society in the information exchange.

Much attention to the information society development is paid in the doctrinal studies as well. According to our reckoning, the definition of information society, proposed by I.V. Aristova is the most informative and comprehensive one. She defines it as the “civil society with the developed information production and a high level of information and legal culture, in which the efficiency of human activities is provided by a variety of the services based on the intelligent information technologies and communication technologies” (Aristova, 2002). Moreover, the study conducted demonstrates that not only information, but also knowledge plays an important role in the society development. A special place belongs to the notion “knowledge society”, which characterizes the next stage of the information society development—the transition from the ICT development and implementation to the joint formation and use of knowledge. The previous studies have proven that on the way of developing information state, any state should go through four stages: (1) civilized state; (2) public and service state; (3) e-state; (4) information state (Aristova, 2016).

The work contains the proposal and justification for the main provisions of the concept of implementing the national policy of the information society development by local self-government authorities in Ukraine: (1) the definition of a model of local self-government authorities in terms of the development of information society and information state in Ukraine; (2) the definition of the basic strategic objectives of the national policy of the information society development in Ukraine; (3) the determination of the main strategic objectives of the national policy of the information society development in Ukraine, the achievement of which requires the participation of local self-government authorities; (4) making the list and defining the content of the functions which contribute to the realization of the national policy of the information society development by local self-government authorities in Ukraine; 5) the determination of the features of the management, public service and information function implementation by local self-government authorities, the powers to be required for such implementation, and the organisational and legal bases for the activities of local self-government authorities at different stages of the information state development. Based on the provisions of the work, it is suggested that the implementation of the national policy of the information society development in Ukraine should be considered in the context of the comprehensive implementation of the management, public service and information functions by the aforementioned entities, including local self-government authorities.

The authors have studied and implemented all the provisions of the above-mentioned concept. Considering the limited volume of the article, they have considered it possible to focus on the implementation of the information function by local self-government authorities.

The main principles in this process is the transparency of the public administration system, and ensuring free access to information. Unfortunately, in Ukraine there are the cases when local self-government authorities, with the aim of eliminating the public from the process of making socially important decisions,

gain their ends by arts. A quite common practice to restrict access to the meetings of local councils is the use of such “artificial” barrier as the protection of confidential information about private persons that is disclosed during the process of the certain issue consideration. This relates primarily to the consideration of the land or other property issues, the information on which in accordance with the Law “On Access to Public Information”, including the conditions for obtaining funds or property, surnames, names, patronymics of individuals and names of legal entities which have received those funds or property, cannot be limited (**Korniievskiy, 2012**).

It is beyond argument that the assessment of the passive aspect of an access to public information is important in implementing the information function. Taking into consideration the increasing role of information technology in the interaction of the public and local self-government authorities, a very important task for the latter is to ensure access to public information on official web sites in the Internet. Informational security provides protection from the threats to the information infrastructure and protection of the information (Klochko, 2013).

The monitoring of the content of the official webpages of local self-government authorities enables to distinguish some characteristic features and common shortcomings (**Korniievskiy, 2012**).

1. **The availability of information on the mechanism for exercising the right to access to public information.** According to the data of the study conducted by the Center for Political Studies and Analysis in 2011, 74% of 523 local state administrations (hereinafter – LSA) and 68 % of 203 local self-government authorities (hereinafter – LSGA) have formed the sections of the access to public information on their websites. In the result of evaluating the content of web resources of local self-government authorities based on such criteria as the indication of full name of the responsible person, his or her e-mail address, telephone number, request forms and instructions on official information, the public experts have received the following indicators: (1) information on the responsible persons for access to public information is available on 19% of the LSA websites and 15 % of the LSGA websites; (2) email address is available on 61 % of the LSA websites and 50 % of the LSGA websites; (3) 55% of the LSA websites and 48 % of the LSGA websites contain the telephone number on which any verbal request for information can be made; (4) request form is available on 47 % of the LSA websites and 48 % of the LSGA websites; (5) the instructions on the information with restricted access is available on 57 % of the LSA websites and 46 % of the LSGA websites.
2. **Difficulties in creating the system of public information logging and accounting in LSGA.** The Resolution No. 1277 of the Cabinet of Ministers of Ukraine “Issues on Public Information Accounting System”, dated November 21, 2011, which has approved the Regulation on such information accounting system, is of advisory nature for local councils. However, article 18 of the Law establishes the obligation for all authorities, agencies or public officers to create a system of their own document accounting and list its components. Moreover, each public information manager should provide access to the accounting system by posting on the official web-sites, and in other acceptable manner in case of their unavailability. In the absence of sufficient experience of the operation of the new concept of openness of public authorities, the representative bodies of communities are not always able to establish an effective register of public information. In particular, on the basis of our own examination (**Korniievskiy, 2012**) of the official web pages

of the LSGA communities of the cities of regional importance, we should admit that most of them do not meet the above legislative requirements. The record keeping systems either are unavailable or serve as a list of local regulatory legal acts, or do not contain all essential elements (form and place of storage of the document, its type, media, draft decision recording, period of restricted access to information if it is related to the information with restricted access and the like).

3. **The disclosure of reporting information on the reaction of local administrators to inquiries is carried out not in full.** The monitoring of the content of the web pages of local councils in 25 cities of regional significance has revealed that 10 websites have no information on the receipt of any inquiries; 2 councils have records on the number and topics of inquiries; 13 websites provide information about the number of inquiries and LSGA response. In such a case, a variety of periods and forms of presentation of the information on executing inquiries are used. So, for example, the website of Zhytomyr City Council contains daily description of the number of inquiries and responses to them. The web resource of the local self-government authority of Rivne provides information about the results of consideration of inquiries in the reports on the work of departments and divisions, making it impossible to assess the overall picture of the number of inquiries and the percentage of responses to them. The webpage of Ivano-Frankivsk City Council is equipped with the system of “Electronic Government”, which enables to send online inquiries and electronic requests for public information, and to know the status of their implementation using the certain code. Therefore, the information about the results of the consideration of electronic inquiries and requests is available exclusively for those who make such inquiries and requests.
4. **Arbitrary interpretation of the provisions of the Law “On Access to Public Information” while making the list of information with restricted access.** It is a common practice of referring the information which is not in compliance with the certain legal categories by its content, as well as confidential data, to the information with restricted access. It is also quite common for the list of sensitive information to include the information from the land management projects concerning the allocation of land in ownership/lease; information from the technical documentation on land management, drafting the certificate of title/lease of land, the technical documentation of regulatory monetary valuation of land, etc.

However, even with ensuring adequate access to public information via the Internet, in practice, citizens face the fact that information about the time or place of reception, contact information is inaccurate or incorrect. In addition, rural citizens mostly do not have the Internet access, and hardly ever use computer technologies. Therefore, this kind of information disclosure in rural areas is ineffective in order to ensure real access of citizens to public information.

The above-mentioned fact enables to note that further implementation of the modern European model of local self-government in accordance with the principles of the European Charter of Local Self-Government in Ukraine is connected with the intensification of the activities of local self-government authorities of Ukraine as the actors involved in the implementation of the national policy of the information society development in Ukraine, despite the difficult situation in the country.

4. CONCLUSIONS

It has been revealed as a result of the study on identifying the role of local self-government authorities in implementing the national policy of the information society development in Ukraine that: (1) local self-government authorities of Ukraine are legally recognized as the participants of the information society formation in Ukraine and the actors involved in the implementation of the national policy of the information society development in Ukraine; (2) in order to implement this policy, local self-government authorities have both their own powers and the powers delegated by the executive authorities; (3) strategic objectives of the national policy for the information society development in Ukraine are achieved by, inter alios, local self-government authorities or largely on their own, or in cooperation with other actors involved in the policy implementation.

The main provisions of the concept of the implementation of the national policy of the information society development in Ukraine have been substantiated and studied.

The analysis of the activities of local self-government authorities in implementing the national policy of the information society development in Ukraine has enabled to identify the main problems hindering the implementation of this objective: low public confidence in government agencies (including local self-government authorities), weak interaction of governmental organisations and local public authorities; corruption which, in some cases, is accompanied by the provision of false or incomplete information on certain issues, economic failure of local self-government authorities to use advanced information technologies; inefficient personnel policy, which is unable to increase the efficiency of the information society development in Ukraine and to intensify the introduction of the latest information and communication technologies due to the staff inexperience; the population's unequal access to the computer and telecommunication means; inconsistency of the provisions of the existing legal regulatory acts that is not conducive to the comprehensive formation of the legal framework for the information society development in Ukraine; rapid development of technologies and slow development of the legislation that does not allow to resolve the problems caused by abuses in the functioning and developing the information society.

The reforming of local self-government authorities at too low rate nullifies the citizens' expectations concerning the positive changes in this direction and, therefore, undermines the credibility of local self-government authorities as to the actors involved in the implementation of the information society development.

Electronic information resources of local self-government authorities (websites of city and regional administrations) do not fulfill their communicative functions in full as they mostly contain information of general nature (for example, data on the structure of the regional or city administrations, reception hours of officers, and the like). It is almost impossible to find full reports on the implementation of the state programs or other such information on these informational resources due to the generic, declarative content of the information posted on the website.

It has been established that the improvement of the activities of local self-government authorities in Ukraine in the direction of the introduction of the modern European models of local self-government requires, in turn, the intensification of their activities in the following areas: (1) the innovative direction of the activities; (2) the public service activities; (3) the implementation of the advanced ICTs in their activities; (4) the direction of the creation of information resources and information and communication

infrastructure, the formation of information and legal culture and ensuring the information rights. That is, the focus on the place of local self-government authorities in the implementation of the national policy for the development of information society in Ukraine is coming at an opportune time in the search for mechanisms to improve the efficiency of their activities. The confirmation of the constructiveness of this approach has been obtained.

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