

IDESIS IRYNA VALERIIVNA

*National University «Odesa Law Academy»,
Associate Professor of International and European Law Department, PhD*

**EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT
AS THE BASIS OF STATUTORY LEGISLATION
IN THE EU MEMBER STATES AND UKRAINE**

Ukraine is in the process of the European integration now, which makes important usage of the European standards in our country, including the municipal standards. When it comes to municipal standards, they are absent within the EU. EU member states apply those standards that have been developed by the Council of Europe, including European Charter of Local Self-Government.

The European Charter of Local Self-Government raises an interesting issue – the appropriateness of state registration of the municipal charters. The problem is this.

Although the European Charter of Local Self-Government (Charter) does not explicitly provide for the mandatory existence of a municipal charter, and does not mention such a legal act at all, one of the articles of the Charter – namely, the article «Constitutional and legal basis of local self-government» – states that ‘The principle of local self-government is recognized in national legislation and, as far as possible, in the constitution». Article 8 of the Charter covers the basics of the administrative supervision of local authorities’ activities. None of its provisions are about the municipal charter’s registration.

One of the manifestations of administrative supervision over local self-government bodies in Ukraine should be considered the state registration of the municipal charters.

Once the municipal charter has been adopted, it must be registered. Currently, Part 2 of Art. 19 of the Law of Ukraine ‘On Local Self-Government’ establishes that «the municipal charter is subject to state registration in the central executive body that implements state policy in the field of state registration (legalization) of associations of citizens, other public formations», and Part 3 states that such registration may be denied: «the grounds for denial of state registration of the charter of a territorial community may be its inconsistency with the Constitution and laws of Ukraine».

The norm on the need for state registration of the municipal charters is specified in the Regulation on the state registration of the statutes of territorial communities, approved by the resolution of the Cabinet of Ministers of Ukraine of July 27, 1998, № 1150.

In particular, the Regulation stipulates that:

– registration of the municipal charters of territorial communities of villages, settlements, cities (except Kyiv and some other big cities) is carried out by regional, city district (in case of formation) departments of justice;

- the following documents are submitted for the charter registration: the charter itself, the decision of the local council on its approval, the minutes of the plenary session of the local council, at which the decision on registration of the charter was made, and the document on registration fee;
- the application for registration of the charter is considered within a month;
- in case of decision-making on registration of the charter the certificate on the state registration of the municipal charter of the established sample is issued;
- the grounds for refusal to register the charter may be its inconsistency with the Constitution and laws of Ukraine. The decision to refuse to register the charter may be appealed in court;
- cancellation of the registration of the charter is carried out by the body that registered it: a) in case of submission of a written application by the village, settlement, city mayor in the presence of the relevant decision of the representative body of local self-government; b) on the basis of a court decision.

We agree that the fee for registration of the municipal charter should not be charged. However, in our opinion, the municipal charter should not be subject to state registration at all, which will be in line with the European Charter mentioned above (Article 8).

Regarding the state registration of the statutes of territorial communities, two parallels can be traced.

The first parallel can be made based on the name of the act being registered – «charter». In Ukraine, a number of legal entities operate on the basis of statutes, mostly such legal entities of public law as companies. Article 87 of the Civil Code of Ukraine provides that «the constituent document of the company is the charter approved by the participants or the memorandum of association between the participants, unless otherwise provided by law».

It is subject to state registration (by the way, as well as the municipal charter – for entry into force). The procedure for state registration for these statutes is not provided separately – their state registration is carried out within the state registration of a legal entity (legal person).

The second parallel can be drawn based on the fact that the municipal charter is a normative legal act of a by-law nature. In Ukraine, there is a practice of state registration of bylaws. The list of bodies whose acts come into force after such state registration and the requirements for bylaws subject to state registration are given in the legislation. However, the analysis of these acts gives grounds to assert that the state registration of the municipal charters takes place according to a procedure closer to the state registration not of normative legal acts, but of the statutes of legal entities of public law. In addition, acts of local self-government bodies are never registered – only acts of state authorities. Acts of representative bodies are also not subject to registration (in addition, in Ukraine there is no other than the charter of the territorial community, a normative legal act called «charter»).

It is expedient to abolish the requirement for state registration of the municipal charters. After all, they are acts of representative bodies of local self-government, to which it is always possible to apply the provisions of Part 2 of Art. 144 of the Constitution of Ukraine that «decisions of local governments on the grounds of their inconsistency with the Constitution or laws of Ukraine are suspended in the manner prescribed by law with a simultaneous appeal to the court».

To conclude, one have to mention, that the EU members do not have such a requirement in their legislation – including France, Poland, Romania, Bulgaria, Spain, Italy, Portugal, other countries.

Ключові слова: муніципальні стандарти, європейські муніципальні стандарти, статути територіальних громад, право на місцеве самоврядування, місцева демократія, місцеве самоврядування.

Ключевые слова: муниципальные стандарты, европейские муниципальные стандарты, право на местное самоуправление, местная демократия, местное самоуправление.

Key words: municipal standards, European municipal standards, municipal charters, right to local self-government, local democracy, local self-government.

CORNELIUS NOLEN

*Organization for Security and Co-operation in Europe,
Monitoring officer Special Monitoring Mission to Ukraine*

HATE SPEECH AND HATE CRIMES IN THE COVID-19 ERA

In March of 2021, the UN Special Rapporteur on Minority Issues reported that since the beginning of the COVID-19 era the world faces a *veritable tsunami of hatred and xenophobia*. He said a treaty was needed to regulate hate speech in social media, and this must in particular focus on the most prevalent and harmful forms of hate – and that was hate against minorities. He said «we at the United Nations and in many countries may be failing in not naming and tackling this evil.» While the scourge of COVID-19 is being addressed and may be under control within a year, the SR said, «The disease of minds shows no signs of weakening.» On the contrary, he said hate speech in social media is spreading and strengthening.

There is no treaty, but is there an international normative framework? This issue was discussed by human rights experts from international organizations during an on-line roundtable on 1 April 2021. Summarizing international law, a representative of the United Nations Human Rights Monitoring Mission in Ukraine (OHCHR) stated that first there is a need to distinguish hate speech and hate crime. According to the UN, the starting point must be full respect of freedom of expression (the «oxygen of democracy») is safeguarded. Free speech is protected in a wide range of international instruments, including the International Convention on the