

КОНСТИТУЦІЙНЕ ПРАВО

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THE LEGAL SUPPORT FOR THE FINANCIAL CAPACITY OF TERRITORIAL COMMUNITIES' ASSOCIATIONS IN FRANCE

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The article deals with the peculiarities of the French legal framework for ensuring the financial capacity of territorial communities. It is found out that in order to increase the vitality of communes and the efficiency of their activities, French law offers two options: the merger of several communes into one and the association on the basis of cooperation between them. It is observed that preference is given to the associations of intercommunal cooperation, and among such associations, those with their own taxation regime predominate. It is stated that the financial capacity of the communes is achieved primarily through their own resources and revenues to the joint budget, a significant share of which are taxes and fees, as well as financial support from the state.

According to the results of the study, it is concluded that the financial capacity of territorial communities is an indicator of appropriate allocation and use of available resources in accordance with local needs as well as an effective factor in social and economic development of individual territories and the state as a whole.

Keywords: territorial communities, intercommunal cooperation, municipal reform, legal basis, financial autonomy legal basis, financial autonomy.

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Problem Formulation. Increasing the capacity of territorial communities, especially the formation of an appropriate financial basis for their activities is a key factor in building a working model of local self-governance in Ukraine. In the light of the municipal reforms taking place in this state, special attention is focused on the voluntary association of territorial communities as one of the ways to make them more capable. For such communities to be fully functional, they must first be provided with relevant legal guarantees, i.e. an effective regulatory and legal framework is to be created for the successful exercise of their powers. Since the further course of the reform remains open, and the principle of voluntary unification has been partly endangered, the search for additional mechanisms could be one of the ways to solve this problem. The development of cooperation between territorial communities can be an effective solution. Therefore, the reference to the European practice in this field, first of all, to the French model, which is an exemplar for a number of states in the process of building a democratic society, becomes especially relevant one.

State of the Research. The issues of local self-governance, especially the legal aspects of its effective functioning and rational reform, are considered by many Ukrainian and foreign researchers, including P. Hural, V. Shapoval, R. Bedrii, V. Kuibida, I. Zaiats,

M. Baimuratov, O. Batanov, C. Deffigier, L. Janicot, G. Marcou, A. Richard, J.-C. Douence and others.

In spite of the large focus of the scholars on the issues of local self-governance, research of the problems of territorial communities' association in Ukraine, their financial basis and ways to overcome the lack of capacity of a significant number of communities is still not given enough attention. And the consideration of foreign, particularly French, experience in this sphere is mainly fragmentary.

Certain aspects of this issue have been examined by a number of Ukrainian researchers. For example, R. Bedrii believes that the adoption in Ukraine of the laws on Cooperation of Territorial Communities of June 17, 2014 and on Voluntary Unification of Territorial Communities of February 5, 2015 created a legal basis for the formation of economic and financial opportunities for communities, activating the process of their unification [13, p. 133]. The question remains disputable as to whether the current legal and regulatory framework is sufficient for the effective functioning of such communities.

A group of authors, including G. Borshch, V. Vakulenko, N. Hrynychuk and others, consider financial resources, most of which have an internal origin, as a significant type of security for the amalgamated territorial community [14, p. 45]. Y. Radelytskyi analyzes the cooperation of territorial communities in the economic context and believes that this type of activity will help communities not only to save resources, but also to provide opportunities for delivering services and improve their quality as well as to contribute to the social and economic development of their respective territories [15, p. 103–104].

However, Ukrainian researchers consider French experience of unification of territorial communities (communes) mainly partially, since they limit themselves to one of its aspects. In this sense, the opportunities for overcoming financial incapacity of small communities through the creation of associations based on the development of cooperation between the communities are almost not tackled.

The French researcher A. Richard analyzes the cooperation between the communes at the functional level and considers it as a practical tool that provides the municipalities with financial and operational opportunities for the implementation of joint projects [11, p. 57]. At the same time, C. Deffigier believes that the intercommunal cooperation is an acceptable alternative for the reduction of the number of small communes by merging them as well as one of the means of rationalization of local governance [7, c. 83]. This is how local structures were rationalized in many countries of the «Old Europe». Instead, L. Janicot believes that the territorial criterion of recognizing the ability of local authorities to carry out activities aimed at cooperation and development is no longer essential [8, p. 133]. Moreover, under the conditions of integration processes and globalized society, the cooperation between territorial communities often goes beyond the national territory.

However, the conducted research requires additional study and deeper analysis in order to identify the positive European experience that can be used for the successful promotion of the local self-governance reform in Ukraine.

This is the **purpose of our article** – to consider the peculiarities of the French experience of legal support for the financial capacity of territorial communities' (communes) associations that are carried out mostly on the basis of intercommunal cooperation, with possible use of positive achievements in domestic conditions, taking into account the Ukrainian specifics and realia. In view of this, we have set the following objectives: to clarify the legal basis for the amalgamation of communes and their resources as a way to ensure community empowerment; to identify the grounds for the French legislator to give precedence to the development of different types of intercommunal cooperation over the usual enlargement of territorial communities; to

examine the advantages of communes association based on cooperation between them; to show the internal and external resources that underpin the financial capacity of the territorial communities.

Statement of Basic Material. One of the key factors in the exercise of territorial communities' powers is their financial capacity. Since most of the communes in France are small in terms of territory and population, it has been a matter of urgency to ensure their self-sufficiency. One of the ways to solve this problem is to enlarge the communes. But the process of enlargement, i.e. reduction of the number of communes by the usual unification (merging) of several communes into one or joining of smaller ones to the larger one, did not go on very willingly. Moreover, in France, as an alternative to the forced enlargement of territorial communities, since the end of twentieth century, the development of intercommunal cooperation, which began at the end of the twentieth century, has been actively pursued. Today, the association of territorial communities on the basis of cooperation between them is one of the effective ways for the communities to effectively exercise their powers and allows each commune, even the smallest one, to retain its legal status as a territorial community.

Over the past decades, a variety of intercommunal cooperation structures have been actively developed. A number of legal acts have facilitated both the creation of new communities, i.e. communes associations based on intercommunal cooperation and suggested mechanisms for their establishment. This allowed different communes to choose those forms of association that they felt would be more effective or better suited their needs.

There are several reasons why French lawmakers give priority to intercommunal cooperation over a simple merger or affiliation. Among them, not only political motives, but also economic and legal feasibility prevail. This is primarily to preserve the principle of voluntariness, since communes are not often willing to unite in such a way as to lose their status and identity as a distinct territorial community [2]. However, this method of unification did not give any special privileges to individual communes. Some progress was made in this regard in March 2015 with the adoption of the Law on the Improvement of the New Commune Regime for Strong and Vital Communes. Thus, articles 13 and 14 of this law enshrine the financial obligations of the state to support the commune unification. All communes that united before 1 June 2016 are guaranteed to maintain the same level of state subsidies for the next three years as for the previous year [10].

Although the principle of voluntariness was partially limited by the Law of 27 June 2014 on Modernization of Territorial Policies and Approval of Metropolitan Areas, which provides for forced unification of communes around the large metropolises, this is in particular in line with Article 10 of the European Charter of Local Self-Government. This article enshrines the right of territorial communities, within the limits of the law, to associate and cooperate in order to exercise their powers aimed at the accomplishment of the objectives of common interest. However, the establishment of such associations is possible under the condition that the right is recognised by the domestic law of the state [3]. Despite France's late (compared to other countries) ratification of the European Charter of Local Self-Government in July 2006, the right of territorial communities to associate was enshrined in French law much earlier, long before the adoption of the Charter and has more than a century-long history.

Furthermore, the French Constitution stipulates in Article 72 §2 that the territorial communities may take joint decisions within their powers for their more effective implementation at the local level. This article refers to a separate law that may grant powers to territorial communities or their associations to carry out joint activities [6]. The Constitution, in particular, Article 72-2, guarantees to all territorial communities the

fiscal income and other resources that constitute a significant part of the aggregate resources. The Constitutional provisions also refer to the organic law that regulates the procedure for their establishment and usage.

Thus, the legal support of the financial basis of communes' associations is ensured not only by the Constitutional provisions and the relevant codified acts, the General Code of Local Communities and the General Tax Code, but also by a special financial law, which is adopted annually and which enshrines the state budget for the relevant year.

This law also determines the amount of government subsidy and subventions for territorial communities and their associations. Intercommunal cooperation provides an opportunity for communes to improve their financial potential and provide services that an individual territorial community cannot provide in a good quality manner due to the lack of appropriate resources.

The associated communes received certain advantages for which they ceded a part of their autonomy. These benefits include sharing resources to implement costly projects, build infrastructure and generate additional fiscal revenue. In particular, it is observed that housing construction is actively developing on the territory of these communes. Since 2010, the annual increase in the number of building permits reaches an average of 12.5 %, this applies primarily to urban communes. Public transport networks are actively developing and, accordingly, transport services are being provided more efficiently [12, p. 4].

In addition, the ability to concentrate additional funds allows communes to jointly finance the development of social, cultural and sports infrastructure as well as to improve the provision of certain services to the population, e.g., on transportation and waste processing, development of public transport and maintenance of roads, construction of kindergartens and nurseries [12, p. 5].

It should be noted that preference is still given to associations of communes with their own tax regime, in contrast to a simple association, the budget of which is formed by the contributions of communes that are part of it.

Today, in France, there are 4 types of associations with their own tax regime: communities of communes, communities of agglomerations, urban communities and metropolises. The peculiarity of such associations is that they have the right to receive tax revenues as additional ones to those received by the commune, or, in certain cases, to receive separate taxes instead of the communes that are part of such an association.

In particular, the provisions of Article 72-2 of the Constitution stipulate that territorial communities may receive, in full or in part, tax funds as well as they have the right to determine the grounds for taxation and tax rates. The Constitution also stipulates that the transfer of powers from communes to associations is accompanied by the transfer of necessary resources. If a power is enlarged, resources are increased accordingly to ensure its exercise. In addition, the allocation of resources is provided to ensure equal rights of territorial communities [6].

Communities with their own taxation receive a subsidy from the state for the development of intercommunal cooperation. Note that this subsidy together with the compensation constitute a general government subsidy for the operation. The methods of distribution of subsidy are enshrined in Articles L 5211-28 and L 5211-38-1 of the General Code of Territorial Communities [4].

The financial capacity of associations of communes is based primarily on the internal resources – taxes and fees as well as financial support from the state, which form together the main part of local resources. Instead, the loans and proceeds from the sale of property and the provision of local services account for a very small share. Most of the revenues from taxes and fees cover a part of the operation (current annual expenditures)

of the association's budget. There are 4 direct local taxes, among which there are residence tax and two types of land tax (property tax on developed land and property tax on undeveloped land) as well as the territorial economic tax, which contains two components: corporate land charge and value added tax.

In addition, the association's budget is filled with indirect fees, including a tax on collection of household waste, a tax on commercial premises, an ownership registration fee as well as local tax rebates and special subsidies provided by individual ministries. But this type of revenue is insignificant.

The list of taxes from which the communes that are members of associations with their own taxation receive revenues is contained in Articles 1379 and 1379 bis of the General Tax Code [5]. Part 2 of Article L 5211-28 of the General Code of Territorial Communities contains a provision that starting from 2019, the total amount of subsidies for intercommunal cooperation distributed annually from the state budget is equal to the total amount that associations with their own tax regime received in the previous year, and increased by 30 million euros. In 2019, these subsidies increased by an additional 7 million euros [4].

The table below shows how revenues and expenditures are distributed at the intercommunal level during 2017-2020. As we can see, the current operating revenues significantly exceed the expenditures of this item in the budget. The main part of revenues is the own resources of associations, the amount of which is on average three-four times higher than the amount of government subsidies. In general, the budgets of associations with their own taxation are balanced, with a small positive balance, except for 2019, which has a small negative balance, but it is compensated by a slightly higher expected revenue in the next 2020.

Table of accounts of territorial communities and their associations with their own taxation regime (in billion euros) [9]

Main budgets	2017	2018	2019	2020 (provisional values)
OPERATING EXPENSES	171.97	172.50	174.70	174.98
OPERATING REVENUES:	201.70	203.89	209.27	205.83
<i>taxes and charges</i>	133.83	140.90	145.43	143.53
<i>local taxes</i>	84.54	86.51	89.47	91.12
<i>other taxes and charges</i>	49.29	54.39	55.96	52.41
Revenues from state budget:	38.92	34.70	34.88	34.94
<i>general operating grants</i>	30.91	26.82	26.78	26.61
<i>other subsidies</i>	1.77	1.74	1.73	1.90
<i>tax equalization and compensation</i>	6.24	6.14	6.38	6.42
<i>subventions received and fund raising by issue of shares</i>	12.17	11.43	11.66	12.50

<i>sales of property and services</i>	9.26	9.87	10.30	8.56
<i>other operating revenues</i>	7.53	7.00	7.00	6.30
INVESTMENT EXPENDITURE (excluding reimbursements)	48.29	50.81	57.79	54.19
INVESTMENT REVENUES (excluding borrowings)	19.45	21.53	23.26	22.86
TOTAL EXPENDITURE (excluding reimbursements)	220.26		232.48	229.18
TOTAL REVENUES (excluding borrowings)	221.16	225.42	232.53	228.69
TOTAL EXPENDITURE	233.72	237.36	246.72	243.52
TOTAL REVENUES	235.01	238.78	246.15	247.07

At the same time, the crisis caused by the pandemic has adversely affected the financial base of local communities and their associations. On the one hand, additional expenditures of territorial communities increased, and, on the other hand, financial revenues to local budgets decreased [1, p.18]. But this trend is global.

Conclusions. The financial capacity of territorial communities is an indicator of the appropriate use of available resources in line with local needs. It is achieved by the association of communes and shared resources, i.e., through own resources of the territorial communities, a significant part of which comes from tax revenues, and a part from government subsidies.

Since the cooperation between communes is an important factor in the social and economic development of not only individual territories but also of the state as a whole, this form of exercise of local powers has a considerable legislative support from the state. In order to ensure the viability of all communes, even the smallest ones, and thus improve the quality-of-service provision at the local level, French law actively promotes the development of associations primarily through cooperation between territorial communities.

The effective legislation provides not only different legal options for communes but also financial guarantees for their association. However, the priority is given to inter-communal cooperation entities with their own taxation regime, i.e. the capacity of associated territorial communities is ensured primarily through their own revenues.

Association of communes on the basis of cooperation between them is an expression of both natural rights of territorial communities and the result of a rational integration of local and national interests within a state with a unitary form of territorial and political organization.

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ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ ФІНАНСОВОЇ СПРОМОЖНОСТІ ОБ'ЄДНАНЬ ТЕРИТОРІАЛЬНИХ ГРОМАД У ФРАНЦІЇ

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У статті розглянуто особливості французького правового ресурсу, спрямованого на забезпечення фінансової спроможності територіальних громад. З'ясовано, що для підвищення життєздатності комун та зростання ефективності їхньої діяльності національне законодавство пропонує два шляхи: об'єднання кількох комун в одну та об'єднання на основі співробітництва між ними.

Виявлено, що перевага надається саме міжкомунальному співробітництву, передусім тому, щоб дотриматися принципу добровільності, оскільки в процесі об'єднання комуни здебільшого не бажають втрачати статус окремої територіальної громади.

Показано, що французьке законодавство надає комунам значну підтримку для об'єднання на основі співпраці між ними, яка полягає не тільки у виборі більш оптимальної моделі відповідно до місцевих потреб, але й у фінансовій підтримці від держави для зацікавлених територіальних громад. З'ясовано також, що міжкомунальні об'єднання мають значні переваги, які полягають у спільному використанні ресурсів для реалізації затратних проектів, розбудови інфраструктури та отримання додаткових фіскальних надходжень. Серед таких об'єднань переважають структури з власним режимом оподаткування.

Виявлено, що фінансова спроможність комун досягається передусім за рахунок їхніх власних ресурсів і надходжень у спільний бюджет, вагому частку якого становлять податки і збори, а також дотаційних надходжень від держави. Натомість позики і надходження від продажу майна та надання місцевих послуг становлять незначну частку бюджетів територіальних громад.

За результатами дослідження зроблено висновок, що фінансова спроможність територіальних громад є показником доцільного розподілу і використання наявних ресурсів відповідно до місцевих потреб, а також ефективним чинником соціально-економічного розвитку як окремих територій, так і держави загалом. Об'єднання комун на основі співробітництва між ними є вираженням природних прав територіальних громад у підсумку раціонального узгодження місцевих і загальнонаціональних інтересів.

Зважаючи на отримані результати, позитивний досвід Франції може бути застосовано для успішного реформування місцевого самоврядування в Україні та проведення подальших досліджень за цим напрямом.

Ключові слова: територіальні громади, міжкомунальна співпраця, муніципальна реформа, законодавча основа, фінансова автономія.

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