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Legal Prerequisites of Decentralization Reform in Ukraine: Historical and Legal Analysis (1991–2014)

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ABSTRACT

The article examines key interpretations of the concept of “decentralization” through the prism of public administration reform and strengthening the role of local self-government. Decentralization of power involves a systematic and comprehensive redistribution of powers and responsibilities between central authorities and local self-government bodies. An important component of decentralization of power is the financial independence of local authorities. Decentralization involves optimization in solving national issues and the effective, practical implementation of regional and local projects. It covers almost all spheres of life: political, economic, social, cultural and is fundamental for public administration and international cooperation. Decentralization requires an appropriate economic, social, political and cultural level of development of regions, which will ensure their successful independent and autonomous functioning within the state. It is emphasized that the processes of decentralization were usually affected by serious historical changes in socio-political development. In particular, the integration processes in European countries after World War II became an impetus for decentralization reforms as the most progressive and democratically conditioned form of state administration, as well as a response to the processes of rigid centralization of power in some countries. Geopolitical changes of the late 20th century, also significantly strengthened decentralization changes in European countries. From the angle of historical retrospective, the traditions of local self-government formed in Ukraine are considered. In particular, the Kyivan Rus’ period was characterized by both the distribution of powers between political elites and the influence on the management decisions of territorial communities (viche and verv). Magdeburg law also had a significant influence as a component of the European legal tradition and the processes of urbanization and the development of trade, economic and socio-political institutions. A unique Cossack tradition of decentralization of power and democratic governance was formed in Ukrainian territories. The imperial and Soviet periods of Ukrainian history significantly undermined and undermined the democratic development of local self-government. However, both the events of the Ukrainian Revolution at the beginning of the 20th century and the restoration of state independence in 1991 demonstrated the importance for Ukrainian state-building of both historically formed traditions of decentralization and development of local self-government, and the need to turn to the pan-European experience of reforming government functions.

KEYWORDS

decentralization, Europe, local self-government, reform, territorial community, Ukraine.





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Правові передумови реформи децентралізації в Україні: історико-правовий аналіз (1991–2014 рр.)

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У статті розглянуто ключові тлумачення поняття «децентралізація» крізь призму реформування державного управління та посилення ролі місцевого самоврядування. Децентралізація влади передбачає системний та комплексний перерозподіл повноважень та відповідальності між центральними органами влади та органами місцевого самоврядування. Важливою складовою децентралізації влади є фінансова самостійність місцевих органів влади. Децентралізація передбачає оптимізацію у вирішенні загальнодержавних питань та ефективне практичне впровадження регіонально-локальних проєктів. Вона охоплює практично всі сфери життя: політичну, економічну, соціальну, культурну і є фундаментальною для державного управління та міжнародної співпраці. Для децентралізації необхідним є належний економічний, соціальний, політичний та культурний рівень розвитку регіонів, що забезпечить їм успішне самостійне й автономне функціонування в межах держави. Наголошено, що на процесах децентралізації зазвичай позначалися серйозні історичні зміни суспільно-політичного розвитку. Зокрема, інтеграційні процеси в країнах Європи після Другої світової війни стали поштовхом до реформ децентралізації як найбільш прогресивної та демократично обумовленої форми державного управління, а також відповіддю на процеси жорсткої централізації влади в деяких країнах. Геополітичні зміни кінця ХХ ст. також суттєво посилили децентралізаційні зміни в країнах Європи. Під кутом історичної ретроспективи розглянуто традиції місцевого самоврядування, сформовані в Україні. Зокрема, для киеворуського періоду характерними були як розподіл повноважень між політичними елітами, так і вплив на управлінські рішення територіальних громад (віче та верв). Суттєвий вплив мали також Магдебурзьке право як складова європейської правничої традиції та процеси урбанізації й розвитку торгово-економічних та суспільно-політичних інституцій. На українських теренах сформувалася унікальна козацька традиція децентралізації влади та демократичного управління. Імперський та радянський період історії України суттєво підірвав підвалини демократичного розвитку місцевого самоврядування. Однак і події Української революції на початку ХХ ст., і відновлення у 1991 р. державної Незалежності продемонстрували важливість для українського державотворення як історично сформованих традицій децентралізації та розвитку місцевого самоврядування, так і необхідність звернення до загальноєвропейського досвіду реформування функцій влади.



КЛЮЧОВІ СЛОВА

децентралізація, Європа, місцеве самоврядування, реформа, територіальна громада, Україна.

1. Introduction

The process of decentralization for Ukraine began with the ratification of the European Charter of Local Self-Government, adopted by the Council of Europe in 1985. This was an important step towards the formation of a democratic system of local self-government and the development of the institution of territorial communities. It was the ratification of the Charter that laid the legal foundations for the gradual separation of powers between the central bodies of state power and local self-government bodies. In addition, the Charter introduced the principles of subsidiarity, autonomy of communities and financial autonomy of local budgets. Subsequently, this becomes the basis for reforming the public administration system and modernizing socio-economic models for the development of territorial communities in Ukraine.

After the declaration of independence of Ukraine in 1991, the formation of an effective system of local self-government was threatened. The reason for this was the outdated model of centralized management, which did not meet the needs of the new democratic state with a market economy. During 1991–2014, the search for the optimal model of interaction between central authorities and territorial communities did not stop. Numerous changes in legislation, administrative-territorial structure, and budget policy influenced the formation of the modern model of decentralization.

The period from 1991 to 2014 was characterized by several systemic problems, primarily related to excessive centralization of financial resources, limited powers of local self-government bodies, dependence of local budgets on state transfers, and insufficient regulatory and legal consolidation of the status of territorial communities. The improvement of legislation should affect the development of socio-economic aspects of territorial communities and strengthen the capacity for their future development.

The adoption of the Constitution in 1996 and the Law of Ukraine “On Local Self-Government in Ukraine” in 1997 enshrined the constitutional principles of the activities of local self-government bodies, defining the main principles of their activities. Despite the legal consolidation of the right of territorial communities to independently resolve issues of local importance, the mechanisms for the implementation of these rights remained insufficiently effective for a long time. That is why it is quite logical to carry out a comprehensive historical and legal analysis of the prerequisites for decentralization reforms in Ukraine in 1991–2014, since it was during this period that the key regulatory and institutional foundations for further reforms in the field of local self-government were formed. The study of the processes of evolution of legal regulation of decentralization processes helps to identify the main problems of the public administration system, to assess the effectiveness of existing models of power organization and to find out the reasons for the need for decentralization reform after 2014.

2. Literature Review

The analysis of scientific research and publications indicates a significant interest of domestic scientists in the problems of decentralization of power and reforming the system of local self-government in Ukraine. The scientific literature considers the theoretical and legal foundations of decentralization, the historical prerequisites for its formation, the peculiarities of reforming the territorial organization of power, as well as the issue of delimitation of powers between state authorities and local self-government.

Theoretical and methodological aspects of decentralization were studied by N. Malysheva and O. Kyshko-Yerli [8], while the political features of the evolution of the decentralization reform in Ukraine were analyzed by O. Diorditsa [3]. The issue of regional development in the context of decentralization of management was considered by S. Grinevska [5]. Administrative and legal aspects of the activities of local self-government bodies in the context of reforming the public power system were studied by Yaroshenko A. S. [11].

The historical aspects of the formation of territorial communities and local self-government were studied by Shulga A. and Krasnyanska O. [9]. The problems of implementing the European experience of decentralization in Ukraine were analyzed by Kosteniuk N. [6] and Zhuravel Y. [12]. A comprehensive theoretical and legal analysis of decentralization in Ukraine was carried out by I. Hrymak [4].

At the same time, despite a significant number of scientific works, the issues of historical and legal prerequisites for the decentralization reform in Ukraine in 1991–2014 require further comprehensive

research, in particular in the context of the development of the local self-government system and the formation of a modern model of public administration.

3. Problem Statement

The article is aimed at studying the historical and legal analysis of the prerequisites for the decentralization reform in Ukraine in 1991–2014 and determining their impact on the formation of socio-economic models of management of territorial communities.

4. Methods and Materials

The study uses a set of normative legal acts of Ukraine and international acts, in particular the European Charter of Local Self-Government, scientific works in the field of law, public administration, history, and analytical materials in the field of development of the local self-government system in Ukraine in 1991–2014. The methodological basis of the study is an interdisciplinary approach, which combines historical-legal, systemic and comparative legal research methods. In the process of the study, the historical and genetic methods were applied to analyze the formation and evolution of the legal foundations of decentralization in Ukraine. The retrospective analysis is used to determine the impact of socio-political and legal transformations of 1991–2014 on the formation of the modern system of local self-government.

The comparative legal method of scientific research helped to compare the domestic model of local self-government with European approaches to the organization of public power. The method of system analysis is used to study the interaction of state authorities and local self-government, as well as to transform their powers in the process of reforming the management system.

5. Results and Discussion

The decentralization reform provides for a radical change in the distribution of powers and responsibilities between state authorities and local self-government bodies. Under the reform, the powers and finances, as well as the necessary resources to carry out the tasks, are transferred directly “to the people closest to the people, where they can be implemented most effectively”. On the part of the state, control is established “over the legality of acts of local self-government” [2].

As for the interpretation of the term “decentralization”, there is currently no single definition in the scientific discourse. Decentralization is usually considered as:

- organization of state administrative structures, according to which public power is distributed among various institutions; management decisions are in the sphere of influence of autonomous bodies of the regional or local level;
- methods of organization and management, which involve the delegation of authority to a hierarchically lower level of power;
- the policy of “transfer of power from the state to territorial communities and public institutions to grant them legal powers and financial autonomy”; At the same time, the state retains a supervisory function, which allows “to relieve the central administration, placing responsibility at the level that is most suitable for this” [8, p. 8];
- redistribution of functions, powers and resources from central authorities to local and regional ones;
- “transfer of political, administrative and/or financial powers to subdivisions of the middle and/or lower levels of the public hierarchy” [8, p. 8];
- an interdependent and interdependent process of “expanding and strengthening the rights and powers of administrative-territorial units or lower bodies and organizations while narrowing the rights and powers of the relevant center” [8, p. 8].

Undoubtedly, the purpose of decentralization is usually optimization in solving national issues and the practical implementation of regional and local projects. Therefore, the process of decentralization is multi-vector, covering the political, administrative, financial, and social spheres of public life. Its purpose is the transfer of powers, organizational functions and responsibilities, material

and financial resources from the highest to the lowest levels of the hierarchy of power, while maintaining supervisory functions for the state [8, p. 8–9].

Decentralization is considered to be one of the fundamental principles of public administration reform and a priority area of activity at the international and national levels. Decentralization of power and distribution of resources is an essential lever for the democratization of society, which is especially important for modern Ukraine, given the totalitarian centralized heritage of public administration [3, p. 214–215].

For successful and effective decentralization, it is necessary to have certain criteria for the development of regions that ensure their independence and autonomy from the center:

- economic development: the ability of the region to independently use internal resources and reserves for balanced development and overcoming challenges;
- the social component implies the presence of human capital, which is capable of personal and social well-being and affects the development of the economy at the regional and national levels;
- the political factor is based on the transformation of the management system towards strengthening powers and responsibilities at the local level; it is also important to have ideological unity around common values and the desire to put them into practice;
- the cultural factor of influence enhances regional mobility and forms modern moral and ethical views on progressive development [5, p. 64–65].

No less important is the legal factor, primarily related to the formation of an appropriate regulatory framework, which ensures a clear distinction between central and local authorities, guarantees the financial independence of territorial communities, and forms conditions for the effective functioning of the local self-government system. It is the legal support that determines the mechanisms for implementing the principles of decentralization, the level of autonomy of communities and the effectiveness of management decisions at the local level. The stability of the development of territorial communities, their ability to implement their own socio-economic programs and thereby meet the needs of the population depends on the quality of legislative regulation.

Scientist A.S. Yaroshenko notes that the Government of Ukraine has made a lot of efforts to improve the regulatory framework in the field of administrative relations between the state and local self-government bodies to increase the effective activity of local councils, in particular in terms of providing administrative, social and other services to the population, by expanding powers. Thus, in 2014, the Cabinet of Ministers approved the Concept of Reforming Local Self-Government and Territorial Organization of Power, and approved the Plan for its implementation [11].

It is important to note that the Concept [1] provides for the resolution of several issues, in particular regarding the formation of the capacity of the territorial basis of local self-government, the separation of powers between state authorities and local self-government on the principle of subsidiary, ensuring the quality provision of public services, the introduction of state control over the legality of decisions of local self-government bodies and improving the coordination of the activities of local executive authorities.

For Ukraine, the period after the restoration of state Independence in 1991 became a time of searching for its place on the geopolitical map of the world, vectors of domestic and foreign policy. Building an effective system of interaction between the branches of government, central and regional and local administrative structures – all this implies, among other things, the study of the historical foundations and contexts of state formation.

The Soviet period of Ukraine's history was characterized by the centralization of power, the destruction of historically formed local communities and the principles of local self-government. Only with the beginning of Gorbachev's "perestroika" did the issue of certain aspects of decentralization of power appear on the agenda. However, at that time, there was no question of the financial independence of local authorities, nor of independent managerial functions. But there was an awareness of the need to create a legislative framework aimed at reforming power structures in the direction of weakening the dictates of the center and strengthening local powers. Moreover, the experience of other countries demonstrated the effectiveness of local self-government in solving current issues on the ground, rather than focusing on officials "at the top". Thus, at the end of the existence of the USSR, there were attempts to reform the vertical of power [9, p. 136]. In particular, on April 9, 1990, the Law of the USSR "On the General Principles of Local Self-Government and Local Economy of the USSR" was adopted. This

document recognized the general principles of local self-government as part of socialist self-government, which provides an opportunity for the people, citizens of the country, to independently decide on issues related to the social and economic development of the territory and environmental protection [10].

Taking into account the Soviet model of centralization of power, which continued to weigh on the administrative structures of Ukraine after 1991, various legislative initiatives of the first decade of the restoration of state independence were mainly pointed, rather than systemic, reform. They were aimed at outlining the competencies of local executive authorities and local self-government bodies. The revival of the process of reorganization of power structures towards decentralization was brought by the conclusion by Ukraine in 1994 of the Agreement on Partnership and Cooperation with the EU and the ratification by Ukraine of the European Charter of Local Self-Government in 1997. At the constitutional level, local self-government is also guaranteed in Ukraine. However, the legislative framework for local self-government, formed based on the Basic Law, actually had superficial changes "to the Soviet model of centralized management" [8, p. 12].

Since 1991, attempts to carry out decentralization reform in Ukraine have encountered obstacles related to the lack of consensus among political elites on understanding the tactics and strategy of the internal development of the state and its foreign policy vectors. In particular, this concerns approaches to administrative-territorial division, organization of power at the local level, financial and material resources, human capital, human resources, etc. In addition, permanent economic and socio-political crises turned out to be a serious test for the vast majority of local self-government bodies. They were unable to use the powers delegated to them [7].

However, Ukraine's European integration aspirations, which were especially pronounced during the events of Euromaidan and the Revolution of Dignity in 2013–2014, demonstrated the urgent need for an effective decentralization reform to improve and stabilize the democratic development of the state and its social orientation, which corresponds to both the historical traditions of Ukrainian society and modern European values in general.

According to N. Kosteniuk, the reform of the local self-government system is a factor in increasing the efficiency of territorial administration by intensifying the participation of the population in solving issues of local importance. Within the framework of the decentralization reform, it is also important to use the self-organization of citizens in the management of the development of territorial communities, as well as to solve local problems. Self-organization of the population is considered a key principle of a democratic society, capable of ensuring the implementation of the principles of democracy and public participation. It is important to note that the formation and development of the system of local self-government is an indicator of the democratization of social relations and the formation of the rule of law. The level of institutionalization of local self-government, the effectiveness of its activities and the ability to meet the needs of territorial communities can serve as an indicator of Ukraine's approximation to European standards of public administration and democracy [6, p.142].

The prerequisite for the decentralization of power in Ukraine was the period of the presidential term of ex-president Viktor Yanukovich, from 2010 to 2013 a process of strict centralization of power unfolded in the state; strengthening presidential power, contrary to the Constitution of Ukraine; leveling the role and place of local self-government bodies in the system of public administration; destruction of financial independence of territorial communities; sky-high scope of corruption schemes [12, p. 269].

Decentralization is one of the key concepts of modern public administration, which is closely related to the process of expanding the powers of local self-government bodies in the system of relations between the central government and territorial communities. There is no unified approach to defining the essence of this concept in the scientific literature, but the most common is the interpretation of decentralization as the process of transferring part of the power, administrative and financial powers from state bodies. authorities to local self-government bodies.

By its legal nature, decentralization provides for the redistribution of competence between different levels of public power by assigning certain functions and responsibilities to bodies of the lower territorial level. This approach contributes to increasing the efficiency of management, bringing the decision-making process closer to the population and ensuring greater independence of territorial communities. At the same time, an important feature of decentralization is that local self-government bodies are formed through elections, which ensures the implementation of the principles of democracy and allows citizens to directly elect their representatives to resolve issues of local importance.

Despite the fact that Ukraine has historically formed institutions of local self-government and democratic principles of public administration, the period of imperial and Soviet control over Ukraine significantly slowed down the formation and development of the process of decentralization of power after 1991.

Scientist I. Hrymailo confirms that the decentralization reform in Ukraine actually began with the adoption of the Concept of Reforming Local Self-Government and Territorial Organization of Power in Ukraine on April 1, 2014 [4].

After the adoption of the Concept, a comprehensive renewal of the public administration system was launched, aimed at expanding the powers of territorial communities, strengthening their financial capacity and improving the mechanisms of local self-government. As a result, the reform became an important stage in the democratization of public administration, creating preconditions for the formation of developed territorial communities and bringing Ukraine closer to European standards of public power.

6. Conclusions

Thus, we can state that various institutions of local self-government and forms of interaction between central authorities and local self-government have been formed in Ukraine for a long time. The process of restoring state Independence has become for Ukraine not only a period of return to historical state-building traditions, but also a difficult period of searching for its place in the new geopolitical conditions. Despite the urgent need, the decentralization reform remained purely declarative for a long time. Significant factors that influenced the reform process were the usurpation of power by Viktor Yanukovych and his clique, the events of Euromaidan and the Revolution of Dignity, and the process of Ukraine's European integration.

Of great importance in the process of reforming the system of local self-government was the improvement of the regulatory framework aimed at a clear delimitation of powers between state authorities and territorial communities. The reform of local self-government and territorial organization of Ukraine, officially launched on April 1, 2014, contributed to administrative, legal, financial and material changes at the local level. This was justified by the relevant legislative changes, the European experience of decentralization, as well as the reliance on historical traditions and prerequisites that took place in Ukraine.

The adoption of new legislative acts in the field of decentralization has created legal mechanisms for the formation of powerful territorial communities, the expansion of their financial autonomy and ensuring the implementation of the principle of subsidiarity. Despite the long period of the Russian-Soviet policy of leveling Ukrainian historical traditions of local self-government and imposing alien forms of distribution of powers, in Ukraine, the reform of local self-government is recognized as one of the most successful among a series of reforms that our country initiated, in particular, with the aim of European integration.

Decentralization has demonstrated a new format of relations between citizens, local authorities and the state. The involvement of citizens in community management, solving urgent problems and forming vectors of development should contribute to the effectiveness of management and strengthening responsibility for the decisions made, as well as control over their implementation.

Further development of decentralization requires systematic improvement of the constitutional and legal regulation of local self-government and ensuring the stability of legislation in the field of public administration. The successful implementation of any reform involves the study of the best practices of other countries and relevant national achievements. Therefore, further prospects for the study are to study the European experience of decentralization as an effective system of public administration and regional development.

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