

SECTION 3

CONSTITUTIONAL AND LEGAL PRINCIPLES OF ORGANIZATION OF ACTIVITY OF STATE AUTHORITIES AND LOCAL GOVERNMENT

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DECENTRALIZATION AS THE MAIN COMPONENT OF LOCAL SELF-GOVERNMENT REFORM

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Summary

The purpose of the article is to study the reform of local self-government, the main component of which is decentralization. At the same time, the main goal of the reform of local self-government, in our opinion, is timely, effective, independent provision of its effective activity, first of all, to solve issues of local importance at one's own expense, which will further lead to the full mobilization of all internal reserves and the endowment of all territorial communities with large resources.

During the research, general scientific methods were used, in particular: historical, logical, systematic. The historical method was used when considering the objective process of development of the concept of decentralization with all its twists and turns. The logical method was used to reflect the historical process of the concept of decentralization in a theoretical and abstract form. The system method made it possible to consider decentralization in the form of an extremely complex socio-political system. It is through the systematic approach that an opportunity is created to comprehensively assess the current state of decentralization, its significant resource and intellectual potential, opportunities for the establishment and development of a democratic legal state.

The very concept of «decentralization» is defined, which is generally interpreted as the transfer of powers from state authorities to local self-government bodies.

In foreign countries, decentralization is considered as a kind of process of transferring power and corresponding financial resources from the central to lower levels of government, such as provinces, regions, districts and municipalities. The main types of decentralization are analyzed and defined: political, administrative and fiscal, as well as the main forms of decentralization: devolution, delegation and deconcentration.

Recently, in the state and society, there is a need to develop new approaches to the system analysis, composition and content of the category of «decentralization», which is traditionally defined as a kind of process in which relevant independent units are formed in a centralized state, which are the bearers of public self-governing power (Local Government). At the same time, an urgent necessary condition for the stable and sustainable development of civil society and a democratic legal state is the effective provision of an effective balance not only of national and local interests, but also the appropriate coordination and cooperation of these interests at various levels of public authority.

We believe that the continuation of the most effective reform of local self-government, the main component of which is decentralization, will contribute to strengthening the capacity of not only local executive bodies, but first of all, local self-government bodies, which by their nature are the primary institution of direct people's power.

Key words: local self-government, local self-government reform, decentralization, deconcentration, devolution, delegation, territorial community, public authority.

1. Introduction

At the current stage of reforming public power in Ukraine, the reform of local self-government, the main component of which is the decentralization of public power, is one of the most important reforms that needs to be carried out as soon as possible.

The reform of local self-government involves the creation of local self-government and the corresponding territorial organization of public power with the aim of creating and properly effective support of a full-fledged living environment for residents of the respective territorial communities, providing them with accessible and more or less high-quality public services, establishing effective institutions of direct people's power and satisfying their interests in full volume in all spheres of civil society activity in the relevant territory, coordination of the interests of the state (state bodies) and relevant territorial communities.

In addition, the importance of the study of this topic lies in the fact that the implementation of the reform of local self-government and decentralization of power, which is defined as one of the main priorities of reform in modern Ukraine, has begun in Ukraine.

Also, I would like to note that the current state of state formation requires the development of new approaches to the analysis and content of the very concept of "decentralization", despite the fact that in modern society, until now, the traditional view of decentralization is considered to be a process in which independent units are formed within the framework of the centralized state, which are the carriers of local self-government.

2. Literature Review

In modern theoretical and practical studies, the categorical concept of "decentralization" is considered in various ways, which is primarily related to the multifaceted definition of the concept itself.

As a general rule, "decentralization is the process of redistribution or dispersion of functions, powers, people or things from central to local management" (Definition of decentralization, 2013).

At the semantic level, "decentralization (from the Latin *de* - opposition, *centralis* - central) is interpreted as the destruction, weakening or cancellation of centralization" (Definition of decentralization, 2013). Thus, it is a peculiar system of distribution of both functions and powers between the state and local levels of management with the extension of the rights of the latter. "The role of decentralization of management in the processes of formation of the institution of local self-government is decisive. After all, decentralization is a kind of management system under which part of the functions of the central government are transferred to local self-government bodies".

In 2014, the Cabinet of Ministers of Ukraine approved the Concept of reforming local self-government and territorial organization of power in Ukraine, which was caused

by important political processes that took place and are taking place in modern Ukraine on the way to European integration and bringing Ukraine closer to the European community. The concept provides for decentralization, the creation of appropriate material (property, in particular, land owned by territorial communities), financial (taxes and fees related to the territory of the relevant administrative-territorial unit) and organizational conditions to ensure the fulfillment by local self-government bodies of their own and delegated powers. In addition, it provides for the implementation of structural reforms that will make it possible to achieve a sustainable economic effect, provided that the priorities and stages of the specified reforms are harmonized with the reform of local self-government and territorial organization of power.

As for decentralization, these issues were also classically studied in the writings of J. Wedel, who saw decentralization primarily "in the transfer of power not to civil servants and bodies representing the central government, but to other bodies that are not hierarchically subordinated to the latter, mainly those elected by the population" (Wedel J., 1973). Despite this, it should be noted that in foreign scientific legal literature, the endowment of local self-government bodies with separate state powers is often considered not as a method of decentralization, but rather as a method of deconcentration (Baltsii Y., 2007).

In the countries of Latin America, as well as in the countries of Europe, if the principles of centralization and decentralization regulate the relationship between the center and places, then both the principle of deconcentration and the principle of concentration are used to distribute competence between different bodies of the same level of public administration. At the same time, the very powers of public authorities are concentrated in the hands of one authority, when it exercises all the powers granted to a given corresponding administrative-territorial unit, while the envisaged system of deconcentration provides for the distribution of functions between different public authority of exactly one link.

3. Methodology

During the research, general scientific methods were used, in particular: historical, logical, systematic. The historical method was used when considering the objective process of development of the concept of decentralization with all its twists and turns.

The logical method was used to reflect the historical process of the concept of decentralization in a theoretical and abstract form. In its essence, logical, it is also a manifestation of the historical, but freed from any details, accidents, and zigzags. At the same time, it should be noted that the historical and logical methods of researching the concept of decentralization are the same, because it is with their effective help that one and the same object, the historical stages of its emergence and development, are studied.

The system method made it possible to consider decentralization in the form of an extremely complex socio-political system, conditionally outline this complex system, determine the composition of the system from a large number of interconnected and complementary elements, identify and direct the proper functioning of this complex system. It is through the systematic approach that an opportunity is created to comprehensively assess the current state of decentralization, its significant resource and intellectual potential, opportunities for the establishment and development of a democratic legal state.

4. Case studies/experiments/demonstrations/ application functionality

Decentralization, as a general rule, is the transfer of powers from the center to local places, which allows to bring the relevant services provided by the legal democratic state into compliance with the needs and requests of the population of the corresponding administrative-territorial unit. Moreover, it can be noted that this very transition to decentralization is a kind of more or less global shift of public power, which frees a person (man) from the so-called state guardianship in advance and allows building an effective democracy from the bottom up.

In foreign countries, decentralization is considered as a kind of process of transferring power and corresponding financial resources from the central to lower levels of government, such as provinces, regions, districts and municipalities.

Also, "Decentralization will be understood as the devolution by central (i.e. national) government of specific functions, with all of the administrative, political and economic attributes that these entail, to local (i.e. municipal) governments which are independent of the center and sovereign within a legally delimited geographic and functional domain" (Faguet Jean-Paul, 1997, p. 5).

When systematically analyzing the literature on the concept of "decentralization", it is sometimes noted that "decentralization is necessary for more even economic growth and redistribution of income, while local self-government bodies must implement their own projects, and for this they need their own tax base, the ability to protect their a share in central taxes and a certain autonomy in the use of part of the collected taxes" (Perezhnyak B., Baltzii Y., 2018, p. 12).

At the current stage of state formation, the very issue of decentralization is one of the important components of modern democratic legal reforms, which in the future will contribute to the transparency of the activities of public authorities.

Proceeding from and summarizing the above, we can state that the traditionally established view of decentralization as a peculiar process by which independent more or less independent units are formed within the

framework of a centralized state, which are the carriers of local self-government (management), require the development of innovative approaches to system analysis its content. At the same time, it should be noted that a necessary condition for the sustainable development of civil society and the effective functioning of the rule of law is to ensure a kind of balance of national interests and values not only with the interests of the relevant territorial communities, but also coordination and sometimes cooperation of these interests at different levels of public authority. Despite the weighty information array of the "decentralization" category, it is very important to divide it into the so-called types (types) of decentralization, since they have different specific qualitative characteristics and signs, are usually political in nature and reflect the corresponding successful achievements in the establishment of legal democratic statehood and civil society.

Today, in the global space, as a general rule, there are three so-called types (types) of decentralization: administrative, fiscal and political, as well as three main forms of decentralization: delegation, deconcentration and devolution.

The most interesting from a scientific and practical point of view is the political type of decentralization, which involves, on the one hand, the transfer of power to authorities from the central to a lower level of management, and on the other hand, the involvement of stakeholders in the joint development and implementation of the appropriate policy. In addition, it should be noted that political decentralization manifests itself through devolution.

Also, supporters of political decentralization believe "that decisions made through broad public involvement will be better and more responsive to the various interests of society, compared to those made by political authorities at the national level. This definition means that the election of political representatives from local polling stations allows citizens to know their political figures better, and in turn, political figures to respond in time to the needs and wishes of their voters" (Slater Richard, 1989).

Hence, it can be noted that political decentralization very often requires appropriate reforms, both constitutional and defined by law, development of political pluralism, strengthening of existing legislation, creation of separate local political units and support of local initiatives and interests of various public groups and strata of the population.

In contrast to political decentralization, fiscal decentralization involves the appropriate delegation (transfer) of certain financial powers and relevant resources and the proper formation of the revenue part of the relevant budget. In addition, it transfers to local public authorities and private enterprises the financial authority to collect local taxes and fees, as well as the right to determine the expenditures of local budgets for

the purpose of their performance of decentralized functions. Fiscal decentralization plays an important role in the formation of the local budget.

As for administrative decentralization, unlike the aforementioned, it is aimed at the appropriate delegation of authority regarding the process of development, adoption and implementation of decisions, powers and relevant resources for the provision of state (administrative) services in specified areas from the central to lower levels of public authority.

Administrative decentralization refers to “the redistribution of power, financial resources and responsibility for the implementation of planning, financing and management of specified state functions from the central government and its bodies to the relevant branch units of local authorities, subordinate units at all levels of state administration, semi-autonomous state authorities, or regional authorities, or associations (joint-stock companies), as well as regional or functional authorities within the defined territory” (Smetanin R., 2010).

In addition, there are two ways of implementing the administrative decentralization itself: through the form of delegation and the form of deconcentration.

The weakest form of decentralization is deconcentration, which is most often used in countries with a unitary form of government. Deconcentration includes the redistribution of authority in relation to the process of making relevant decisions, management authority, financial authority, as well as responsibility between different levels of central executive authorities. It follows from this that territorial or sectoral management bodies are subordinated only to central bodies of public authority.

In contrast to deconcentration, delegation is more or less considered a complete model of decentralization, as it involves the transfer of a large array of state powers to the exclusive competence of local self-government bodies.

Thus, local self-government bodies receive a certain set of rights in some areas in accordance with the current legislation, act independently and have their own sources of funding for this. At the same time, the very process of decision-making and their implementation fully belongs to the competence of local self-government bodies. In the event of certain conflicts between them and the central authorities, they can be resolved either by agreement of the parties or in court.

It is believed that delegation, which is in the middle between the transfer of powers and the power of decentralization, is actually a compromise model of decentralization. In this case, according to the current legislation, local self-government bodies are entrusted with the performance of certain state functions, while central government bodies carry out certain control over the performance of tasks and, as a rule, must allocate funds from the state budget for the performance of these tasks and transfer them to the relevant bodies Local Government.

Also, I would like to note that one of the most important issues of modern decentralization is the question of the appropriate and under which powers decentralization can be carried out. Based on the fact that the main criterion of rational decentralization is the achievement of the highest quality of service to citizens (the population), where the main principle is the principle of subsidiarity, which determines the lowest optimal limit of government intervention in any local affairs.

As a general rule, “the principle of subsidiarity (English subsidiary - auxiliary, complementary) is a general principle that involves the transfer of decision-making powers from the central to lower organizational levels” (Tkachuk A., 2016).

At the same time, the very principle of subsidiarity permeates (instilled) the entire political system of the countries of the European Union, primarily because it is enshrined in Part 3 of Art. 4 of the European Charter of Local Self-Government: “Municipal functions, as a rule, are performed mainly by those authorities that have the closest contact with the citizen. When assigning this or that function to another body, it is necessary to take into account the scope and nature of the task, as well as the requirements for achieving efficiency and economy.” The same article contains another very important principle that explains approaches to the decentralization of power: “If powers are delegated to local self-government bodies by a central or regional body, local self-government bodies have the right to adapt their activities to local conditions to the extent possible.” Despite the fact that Ukraine has ratified this Charter, the very principle of subsidiarity has unfortunately not been reflected in the current profile Law of Ukraine “On Local Self-Government in Ukraine”.

Thus, we believe that the decentralization of powers in Ukraine should take place taking into account the principle of subsidiarity, that is, by transferring powers to the level of management that is as close as possible to the citizen, which is able to fulfill these powers more effectively than other public authorities.

In contrast to the above-mentioned forms of decentralization, devolution as a form of decentralization is considered the most complete form of decentralization and can generally take different forms, but at its core (foundation) lies the idea of increasing powers in favor of local self-government bodies.

At the same time, the main goal of devolution is to strengthen the competence of local self-government bodies precisely for the benefit of the residents of the respective territorial communities, which in general will effectively contribute to the process of democratization of the entire civil society. It should be noted that devolution as a form of decentralization is certainly a winning model for local autonomies (entities) and implies the presence of not only capable but also responsible local self-government.

I would like to note that central authorities, no matter how much we would like it today, still retain power and the corresponding influence during the conclusion of relevant contracts, agreements, agreements, despite the fact that the above classified types (types) of decentralization provide delegation of authority and responsibility to lower levels of public authorities to varying degrees.

5. Conclusions

Summarizing the above, we can state that decentralization is one of the important components of modern democratic reforms carried out in democratic countries of the world and in Ukraine, which effectively promotes transparency in the activities of any public authority.

Recently, in the state and society, there is a need to develop new approaches to the system analysis, composition and content of the category of “decentralization”, which is traditionally defined as a kind of process in which relevant independent units are formed in a centralized state, which are the bearers of public self-governing power (Local Government). At the same time, an urgent necessary condition for the stable and sustainable development of civil society and a democratic legal state is the effective provision of an effective balance not only of national and local interests, but also the appropriate coordination and cooperation of these interests at various levels of public authority.

We believe that the continuation of the most effective reform of local self-government, the main component of which is decentralization, will contribute to strengthening the capacity of not only local executive bodies, but first of all, local self-government bodies, which by their nature are the primary institution of direct people’s power.

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ДЕЦЕНТРАЛІЗАЦІЯ, ЯК ГОЛОВНИЙ КОМПОНЕНТ РЕФОРМИ МІСЦЕВОГО САМОВРЯДУВАННЯ

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Анотація

Метою статті є дослідження реформи місцевого самоврядування, головним компонентом якої є – децентралізація. При цьому, головною метою реформи місцевого самоврядування на наш погляд є своєчасне, дієве, самостійне забезпечення його ефективної діяльності, перш за все, за власний рахунок вирішувати питання місцевого значення, що в подальшому призведе до повної мобілізації всіх внутрішніх резервів та наділення всіх територіальних громад великими ресурсам.

Під час дослідження були використані загальнонаукові методи, зокрема: історичний, логічний, системний. Історичний метод був використаний при розгляді об'єктивного процесу розвитку поняття децентралізації з усіма її поворотами, особливостями. Логічний метод був використаний при відображенні історичного процесу поняття децентралізації в теоретичній і абстрактній формі. Системний метод дозволив розглянути децентралізацію у вигляді надзвичайно складної соціально-політичної системи. Саме через системний підхід створюється можливість всебічно оцінити сучасний стан децентралізації, її вагомий ресурсний та інтелектуальний потенціал, можливості для становлення та розвитку демократичної правової держави.

Визначено саме поняття «децентралізація», яке за загальним правилом інтерпретується як передача повноважень від органів державної влади до органів місцевого самоврядування.

В зарубіжних країнах, децентралізація розглядається як своєрідний процес передачі владних повноважень і відповідних фінансових ресурсів з центрального до нижчих рівнів державного управління, таких як провінції, регіони, райони та муніципалітети.

Проаналізовано та визначено основні типи децентралізації: політична, адміністративна і фінансова, а також основні форми децентралізації: деволюція, делегування і деконцентрація.

Останнім часом, в державі та суспільстві, потребує вироблення нових підходів до системного аналізу, складу та змісту категорії «децентралізації», яка традиційно визначається, як своєрідний процес, в рамках якого в централізованій державі утворюються відповідні самостійні одиниці, які є носіями публічно-самоврядної влади (місцевого самоврядування). При цьому, нагальною необхідною умовою стабільного та сталого розвитку громадянського суспільства та демократичної правової держави є ефективне забезпечення дієвого балансу не тільки загальнодержавних та місцевих інтересів, а й відповідна координація та кооперація цих інтересів на різних рівнях публічної влади.

Вважаємо, що продовження найбільш ефективної реформи місцевого самоврядування, головним компонентом якої є – децентралізація, буде сприятиме посиленню спроможності не тільки місцевих виконавчих органів, а передусім, органів місцевого самоврядування, які по своїй природі є первинним інститутом безпосереднього народовладдя.

Ключові слова: міське самоврядування, реформа місцевого самоврядування, децентралізація, деконцентрація, деволюція, делегування, територіальна громада, публічна влада.