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CHANGE OF THE COMPETENCE OF LOCAL SELF-GOVERNMENT BODIES AMIDST DECENTRALIZATION

ЗМІНА КОМПЕТЕНЦІЇ ОРГАНІВ МІСЦЕВОГО САМОВРЯДУВАННЯ В УМОВАХ ДЕЦЕНТРАЛІЗАЦІЇ

У науковій статті встановлено, що реформа децентралізації передбачає встановлення нової моделі територіальної організації влади, встановлення нових завдань, компетенції та відповідальності, ефективний розвиток системи місцевого самоврядування та формування повноцінних територіальних громад, вдосконалення національної регіональної політика тощо. Водночас, успішне впровадження реформи децентралізації тісно пов'язане з формуванням нової генерації місцевих політиків та муніципальних службовців, які працюватимуть у абсолютно нових умовах та вимагатимуть нових знань, умінь та компетенцій. Це зумовлено, насамперед, зміною статусу громад та очікуваними завданнями, які стоять перед місцевою владою.

Виходить, що з передачею більшої кількості повноважень органам місцевого самоврядування зросла й відповідальність цих органів. Зміцнення статусу українського місцевого самоврядування підвищить відповідальність громадян за забезпечення належного рівня життя. Примітно, що громади, об'єднані законами та планом розвитку, отримують усі повноваження якими зараз володіють міста обласного значення.

Автор приходить до висновку, що децентралізація передбачає перерозподіл повноважень і повноважень між центральним і місцевим рівнями державної влади та перенесення фокусу на місцевий рівень для виконання заздалегідь визначених і гарантованих державою функцій. Розглядаючи децентралізацію, важливо знайти баланс між централізацією та децентралізацією, що необхідно для забезпечення правильного розподілу місцевої та центральної влади. Підвищення ефективності та підзвітності органів місцевого самоврядування, кращі перспективи для місцевого розвитку та запровадження демократії участі та захисту прав людини були виділені як причини, що призводять до більшої децентралізації органів місцевого самоврядування.

Ключові слова: *реформа децентралізації, місцеве самоврядування, правове регулювання, нормативно-правові акти, повноваження органів місцевого самоврядування, оптимізація повноважень.*

The scientific article establishes that the reform involves the establishment of a new model of territorial organization of power, decentralization of tasks, competencies and responsibilities, development of the system of local self-government and formation of full-fledged territorial communities, improvement of national regional policy, etc. At the same time, the successful implementation of decentralization reforms is closely related to the formation of a new generation of local politicians and municipal employees who will work in updated conditions and require new knowledge, skills, and competencies. This is caused, first of all, by the change in the status of communities and the prospective tasks faced by local authorities.

It is substantiated that together with the transfer of a greater scope of competence to local self-government bodies, their responsibility has also increased. Strengthening the status of Ukrainian local self-government will increase the responsibility of citizens to ensure an adequate standard of living. It is noteworthy that communities united by law and a vision plan receive the same powers as cities of regional significance currently possess.

The authors conclude that decentralization is understood as the process of redistributing powers and competence scope between central and local public authorities and shifting the focus to the local level in terms of the performance of predetermined and state-guaranteed functions. When considering the issue of decentralization, it is important to find a balance between centralization and decentralization, which is necessary to ensure the proper distribution of competences of local and central authorities. Increasing efficiency and accountability of local self-government bodies, better prospects for local development, and the introduction of participatory democracy and protection o f human rights were highlighted among the reasons leading to greater transfer of competence to local self-government bodies.

Key words: *local self-government, decentralization reform, legal regulation, competences of local self-government bodies, legal acts, optimization of competences.*

Problem statement. The priority direction of reforms in Ukraine currently includes further democratization of civil society and decentralization of power based on discretion and subsidiarity. The new trend of the country's national building, the formation of civil society, and the optimization of the competence of the state administration system have created new conditions for implementing decentralization pursuing the preservation of the rule of law. The modernization of the competence of public authorities should be aimed at creating a client-oriented system of public administration, which will be an integral part of the mechanism of socio-political protection of the population and a factor in boosting its social and political activity.

The reform establishes a new model of territorial organization of power, decentralization of tasks, competences and responsibilities, development of the system of local self-government and formation of full-fledged territorial communities, improvement of national regional policy, etc. At the same time, the successful implementation of decentralization reforms leads to the emergence of some risks and threats to the successful operation of local self-government bodies and the capacity of communities. This is caused, first of all, by the change in the status of communities and the prospective tasks faced by local authorities. Further effective development of territorial communities necessitates proper coverage of existing challenges and appropriate responses to them.

Analysis of the latest research and publications. The theoretical basis of the article comprises a wide range of scientific and legislative sources. The main ones are the laws and bills of Ukraine, government programs, and other normative legal acts. The coverage of foreign experience in solving problematic aspects of decentralization is presented in the publications of Danylyshyn B.M., Pylypov V.V., R. Ranlolf, and R. E. Matete. Information analysis data, which highliht various aspects of the domestic decentralization process, are also used (V.S. Kuybida, P.M. Petrovsky, A.F. Tkachuk, and others). In the multifaceted system of scientific literature on the specific problems of solving organizational issues of the functioning of local self-government bodies, in particular, regarding competence optimization in their activities, the scientific positions of such authors as V.S. Kravtsiv, I.Z. Storonyanska, Yu.V. Petlenko, Slyusarchuk, O.P., Lelechenko A.P., Vasylieva O.I., and Shevchuk O. were taken into account.

Purpose statement. The purpose of the present scientific research is to justify the regulatory and legal support for optimizing the competences of local self-government bodies and overcoming the risks of decentralization.

Statement of basic materials. On April 1, 2014, the Cabinet of Ministers of Ukraine approved the Concept of reforming local self-government and territorial organization of power, which was the result of political processes taking place in the state and society on the way to European integration. It provides for the creation of appropriate material (property and land owned by territorial communities), fiscal (taxes and fees related to the territory of the relevant administrative-territorial unit) and organizational conditions to ensure the development of the territorial community [1, p. 22]. In addition, in R. Randolf's opinion, territorial communities will have the right to manage land resources within their territories, combining their property and resources for the implementation of joint programs and more efficient provision of public services [2].

The main tasks of decentralization are as follows:

• transfer of competence from the executive power to regional communities and providing them with appropriate financial resources;

• clear demarcation of competence between executive authorities and local self-government bodies;

• strengthening of local self-government;

• responsibility of bodies and officials for decision-making before voters and the state.

As noted earlier, "decentralization of power and, accordingly, the formation of a modern subject of regional development is achieved by the unity of such measures as the transfer of administrative powers, levers of economic influence, municipal property and financial mechanisms to territorial communities and their representative bodies of local self-government. A necessary prerequisite for a territorial community

to become the main subject of regional development is compliance with the constitutional law norms on the declarative (registration) form of approving the charter of a territorial community and granting it the status of a legal entity...” [3, p. 16]

Many authors believe that delegation of competence is the implementation of a compromise model of decentralization, which involves maintaining a balance between the transfer of powers and the essence of decentralization [4].

In this case, as noted by B.M. Danylyshyn and V.V. Pylypiv, local self-government bodies (not a network of central authorities) rely on the competence granted by state authorities, while central authorities exercise some control over the performance of tasks and, as a rule, must allocate state funds in carrying out these tasks. Funds are deposited in the budget and transferred to local self-government bodies [5, p. 10]. Therefore, one of the crucial issues of decentralization is the extent and scope of competence and authority with which decentralization can take place. To clarify the above, it is worth refrering to another essential term – subsidiarity, without which it is impossible to imagine the process of decentralization. That is, the main criterion of rational decentralization is the achievement of the highest quality of service to citizens, and the main principle is subsidiarity, which determines the minimum optimal limit of state intervention in local affairs and their right to independently solve all issues of their level of competence.

The service concept presented in this aricle “conveys the modern understanding of the social purpose of the state, according to which the priority task of democratic governance is to serve civil society, and the main form of activity of power institutions is the provision of public services. Hence, the role of local self-government is the “provision” of services, and the state administration system is considered as an organization for the provision of public services, and citizens – as customers and consumers of these services...”. It is also worth noting that “the groundwork for such a consumer-oriented model of public administration is laid in the Constitution of Ukraine [7]: according to Art. 3 “a person, his life and health, honor and dignity, inviolability, and security are recognized as the highest social value in Ukraine.... Affirmation and provision of human rights and freedoms is the main duty of the state...” [6, p. 523].

As for the issue of delegation of competence, it deserves a separate theoretical analysis. The transfer of a greater scope of competence to local self-government bodies has also increased their responsibility. Strengthening the status of Ukrainian local self-government will increase the responsibility of citizens to ensure an adequate standard of living. It is noteworthy that communities united by the current law, charter, and development plan receive the same powers as cities of regional importance currently have [8].

In particular, the list of budgetary powers of territorial communities is defined in Arts. 89 and 91 of the Budget Code of Ukraine (Article 89 – expenditures made from the budgets of cities of republican significance of the Autonomous Republic of Crimea and regional significance, district budgets, budgets of united territorial communities created in accordance with the law and the perspective plan for the formation of territorial communities; Article 91 – expenditures of local budgets, which can be made from all local budgets) [9].

Analyzing individual, more specific problems of realizing the decentralization process, it is necessary to note that the above-described budget decentralization led not only to success but also raised certain difficulties. In particular, the share of own revenues of the local budget does not exceed 50% and depends on transfer payments from the state budget. However, V. Muštra considers budget decentralization to be a fairly effective way of ensuring financial independence and stability of local authorities. A clear demarcation of functions and responsibilities between state authorities and local self-government bodies, as well as financing local budgets to improve public services, will contribute to their effectiveness [10, p. 1604].

First, it concerns land ownership issues. Land issues in the history of Ukraine have been acute for hundreds of years and to a certain extent have persisted even today. So far, in the seventh year of decentralization, the community cannot dispose of agricultural lands located outside the boundaries of the territorial community. This issue is particularly sensitive in rural and settlement communities with a predominantly agricultural economy. Such a situation was the result of the centralization policy of the Soviet Union, the consequences of which are still evident in independent Ukraine. The Cabinet of Ministers has been making such attempts since 2018, but still not all communities can freely dispose of their land.

The issue was partially resolved thanks to Presidential Decree No. 449/2020 "On some measures to accelerate reforms in the field of land relations" and CMU Resolution No. 1113 "Some measures to accelerate reforms in the field of land relations." On April 28, 2021, the Verkhovna Rada adopted the Law "On Amendments to the Land Code of Ukraine and other legislative acts on improving management and deregulation in the field of land relations".

The law, in particular, provides for the transfer of state-owned lands outside settlements (except for

lands necessary for the state to perform its functions) into the communal ownership of village, settlement, and city councils. It also establishes a clear mechanism for determining community boundaries in the state land cadastre. Local self-government bodies, within their competence, have the right to change the intended use of privately owned lands [11].

The growing contradictions between the center and the regions and the politicization of the activities of local self-government bodies also attract attention. Obtaining additional budgetary resources contributed to certain financial independence of the regions. This was first realized by the territorial communities themselves, a little later by the political parties, which began to pay more and more attention to participation in the elections to the local councils of the corresponding levels. As the financial and economic capacity of both individual communities and regions in general increased, competence confrontations between the central and local authorities began to emerge. It is understandable and, to a certain extent, natural, the desire of the capital to form a certain vertical of local government controlled by it (not always within the limits of current legislation).

Since the very process of consolidation of basic-level administrative units affects the transformation of the structure of units and sub-regional level, the competence of district authorities needs to be reformatted. Such a state of affairs leads to the duplication of the competence of the district state administration and the district council with local self-government bodies of territorial communities, disproportionately high costs for the maintenance of district state administrations, a decrease in the quality of services due to a decrease in district budget allocations for educational and medical subventions.

In the districts where territorial communities were created within the entire territory, there is a duplication of competence of local self-government bodies of the territorial community, district councils, and district state administrations. At the same time, the district state administration and the district council function, which bear the corresponding maintenance costs, as well as the executive power of the district community with the powers and funds determined by law. Decisions on land valuation and redistribution of transfers from the state budget are usually made by the relevant district councils. District and regional authorities were also deprived of the competence of the executive bodies of the councils of territorial communities in accordance with the law.

An actual issue of decentralization implementation is also the inconsistency of competence between local self-government bodies and the general executive power, as well as the inconsistency of competence between local councils of territorial communities, regional state administrations and regional councils. Thy problem manifests itself, for example, in the absence of mechanisms for the redistribution of regional budgets associated with the formation of a territorial community on their territory. The united communities created during the year had to work according to the budget approved by the district council until the end of the budget year. Until now, the question of determining the competences that remain with district state administrations and district councils remains unresolved [12, p. 142].

It is also problematic that the reform of local self-government is weakly tied to sectoral reforms, especially health care, education, reform of administrative services and social policy. Decentralization goes hand in hand with reforms, and to implement reforms, unpopular decisions need to be made at the territorial community level, for example, closing several schools to optimize and improve the quality of educational services. The implementation of health care reform is not always synchronized with the decentralization and competence of local self-government bodies. The reforms, which were supposed to be part of an integrated strategy from the beginning, were carried out separately. In addition, as Yu. V. Petlenko points out that insufficient coordination between central authorities takes place. Thus, the Ministry of Development of Communities and Territories is the main agency for decentralization, but it is not responsible for sectoral reforms developed and implemented at the district level by other ministries [13, p. 40].

The process of deepening budget decentralization may also be accompanied by the emergence of so-called social risks [14, p. 128]. It is about the emergence of situations that can threaten the well-being of society and, as a result, the further development of new communities. Among them, various manifestations of competence conflict can be distinguished (for example, community dissatisfaction with a single approach/conditions due to the fact that their interests are not taken into account, or conflicts related to the unfair distribution of resources or conflicts, which are probably the most common – optimization of social infrastructure) . To this group of risks, experts usually include educational risks, which can be provoked, for example, by local populism, especially during elections, and not by the closing of villages which schools, which ends in the deterioration of education, on the one hand. On the other hand, the optimization of the school network leads to underfunding of education, since the new education subvention formula ensures a

relatively small flow of funds to communities whose average class size is too small.

The next risk of budgetary decentralization is the deepening of financial and economic disparities of communities at different levels. It is the risk which global and domestic researchers consider to be the most important. Due to its ideology, budget decentralization can deepen intra-regional differences in income (observed in Ukraine as a result of the implementation of the first stage of this reform), through the redistribution of state taxes and local self-government with the right to independently determine the amount of income. The lack of own revenues helps to mobilize revenues from territories with strong financial and economic potential. As Rose Ephraim Matete (2022) notes, EU countries faced similar problems [15] and we try to learn from their experience.

Conclusions. Thus, decentralization is understood as the process of redistribution of powers and spheres of competence between the central and local public authorities and the transfer of emphasis to the local level in terms of performance of predetermined and state-guaranteed functions. When considering the issue of decentralization, it is important to find a balance between centralization and decentralization, which is necessary to ensure the proper distribution of competences of local and central authorities. Increasing efficiency and accountability of local self-government bodies, better prospects for local development, and the introduction of participatory democracy and protection o f human rights were highlighted among the reasons leading to greater transfer of competence to local self-government bodies.

The decentralization reform significantly expanded the power and financial resources of local self-government bodies, which is the key to solving the main problems of the community's economic and social development and providing high-quality services to community residents. In the research, the most important problems and risks faced by people and authorities as a result of the reforms were identified, analyzed, and systematized. The phenomena concerned can improve the awareness of its subjects regarding the decentralization process and can become the basis for eliminating existing gaps, namely: improving the interaction of the population with the authorities on reform issues; introducing partial changes to the Constitution of Ukraine, addressing inconsistencies and disagreements in the regulatory and legal support of the reform, and overcoming competence contradictions between different levels of government. Prospective areas for studying issues raised in the article can involve the distribution of powers between local councils of territorial communities, regional state administrations and regional councils in solving land ownership issues, creating economic conditions for strengthening the capacity of territorial communities, etc.

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