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### IMPROVING THE RELATIONSHIP BETWEEN PUBLIC AUTHORITIES AND LOCAL GOVERNMENTS IN THE PROCESS OF DECENTRALIZATION

#### | Abstract

- ▶ *Goal* – to analyze the activities of public authorities and local governments in the context of decentralization, to identify the main problems of the relationship between public authorities and local governments in order to improve their work.
- ▶ *Research methodology* – in the article the author applied general (system analysis method, method of argumentation theory) and private scientific methods of cognition (legal: formal-legal and comparative-legal methods).
- ▶ *Score/results* – the article analyzes the process of decentralization of public administration, on the basis of domestic experience, offers ways of functional and structural optimization of relations between public authorities, explores the principles of improving the relationship between public authorities and local governments in the decentralization process.
- ▶ *Originality/value* – the work is done by the author independently without any help and assistance of others. The article provides links to citations, as well as links to legislation. The nature of the article is a review report.

| **Key words:** decentralization, public authorities, local governments, optimization, reform.

#### 1. Introduction

In the conditions of formation and development of legal democratic statehood in Ukraine and under the influence of globalization and interstate integration

processes in the world and on the European continent, deep reforms of public power begin, accompanied by complex and contradictory processes of its decentralization. It is under the influence of decentralization that effective local self-government as a public authority of territorial communities functioning at the local level begins to be actively formed and developed. The issues of decentralization of public power and development in the conditions of local self-government are interconnected. First of all, optimally organized public power is not only the main problem of self-preservation of the state, but also – the problem of effective functioning of the phenomenon of statehood, its effective adaptation to ever-changing conditions – in such conditions both levels of public power begin to function stably local self-government [Bajmuratov, Hryhorev, 2003].

Today, this issue is very acute for Ukraine, as the current model of public power is ineffective, which leads to duplication of powers between the executive and the head of state, between local executive and local governments, as well as the emergence of competing competencies between them, which ultimately leads to constitutional and legislative conflicts.

In the context of the state's implementation of its program tasks and functions, the resolution of contradictions arising in the process of social development, the state has demonstrated its unwillingness to socio-political renewal, slow pace of its economic and social development as a result of non-transparent and suboptimal organization of public power and contradictory development. Power processes in the state. Therefore, it is in these conditions that the decentralization of public power can become a universal tool and management paradigm, which through the redistribution of powers between different levels of public power can not only determine and stimulate economic reforms, but also intensify them. Accordingly, the task is to show the mechanism for eliminating the conflict between public authorities in terms of duplication of powers and increase the effectiveness of the relationship between public authorities and local governments in the exercise of their powers in a decentralized environment.

## 2. Decentralization as the main direction improving the relationship between public authorities and local governments

The key issue that needs to be addressed in the reform process is to ensure the transfer of the maximum possible amount of power to local governments and to clearly delineate them from the powers of the executive. Today, an important

task is to define and implement in Ukraine its own model of decentralization in management, which will achieve a much higher level of efficiency of public administration to provide citizens with the necessary quantity and quality of social and administrative services. In this regard, it is necessary to define the content and form of decentralization as a condition for the development of local self-government, as the current state of affairs indicates the incomplete formation of local self-government in Ukraine.

On the one hand, decentralization can be seen as a complex phenomenon that includes political, administrative, economic components and is associated with the possibility of building a more effective model of governance at the state, regional and local levels.

Accordingly, decentralization is considered as a principle, method, and property of public administration. Among the forms of decentralization are political, administrative, democratic, market, spatial, financial and budgetary, and decentralization of social services.

Today, various options are offered to define the concept of decentralization of public administration. One of them is the consideration of decentralization as a process of transfer of responsibility for planning and implementation of resources, distribution and other components of social management from central government to regional, local executive authorities, and local governments [Lyapyn, 2015: 7].

Most scholars, considering decentralization, emphasize the importance of finding a balance of centralization and decentralization as a necessity to ensure the effective operation of public authorities. Among the main reasons that push for the transfer of more powers to local governments is primarily a greater level of efficiency and accountability of local governments, better prospects for local development, as well as the introduction of democracy and protection of citizens' rights [*Decentralizaciya...*, 2007: 9]. In this case, decentralization can be seen as a method of governance aimed at the development of territories and local democracy.

In this regard, the proposal of I.F. Lyapyn on the expediency of interpreting the decentralization of state power in a broad, narrow and traditional sense [Lyapyn, 2015]. Broad content covers any constitutional forms of dispersal of state power. It should be remembered that decentralization applies to any public authority, and the separation of powers – exclusively state. In this aspect, decentralization can have a constitutional, legislative and contractual legal nature, and the separation of powers can exist only in the first two. Based on this,

it can be argued that decentralization is a more general phenomenon than the separation of powers. In a narrow sense, the decentralization of state power is a constitutional way of dispersal of power, in which in the prescribed manner, within the prescribed limits, volumes and forms is appropriate transfer of power from national to another, historically formed in a particular country level of power, in our case Local Government.

Professor N. Nyzhnyk considers the concept of decentralization as a phenomenon characteristic of public administration, due to objective and subjective factors, a certain opposite side of centralization, a kind of means of reflecting centralization [Lynov, 2004: 154–155].

In any case, decentralization is the basis for the implementation of new strategies, through the creation of a new management system and its new administrative structure. But the question of the ability of local authorities to independently implement regional development strategies remains very important. In Ukraine, there are depressed areas where it is impossible to create self-sufficient financial structures of local government. Accordingly, such regions will not be able to do without state support.

In our opinion, it would be appropriate to define the concept of decentralization as – regulated by regulations, giving local governments the right to make decisions and carry out independent financial and management activities based on their own sources of income. It is through the transfer of authority and finances to local communities that they have been able to make their own decisions and be responsible for their implementation.

The concept of public administration reform in Ukraine provided that the main goal of the reform of local self-government and territorial organization is to create conditions for the provision of quality and effective public services at the level closest to the citizen. The goals of the reform are to optimize the structure of the administrative-territorial structure of Ukraine to create an effective system of public authorities in the state through broad decentralization of executive power and transformation of local government into a financially viable, efficient and responsible institution of public power closest to the citizen [Kolyushko, 2005].

In Ukraine, unlike other European countries, the reform of decentralization of power is not yet complete. As defined by the Sustainable Development Strategy “Ukraine – 2020”, approved by the Decree of the President of Ukraine from 12.01.2015 No. 5/2015, the purpose of the Strategy is to implement European living standards in Ukraine and at the same time decentralization policy, which

provides a departure from the centralized model of governance. Ensuring the capacity of local self-government and building an effective system of territorial organization of power in Ukraine, full implementation of the provisions of the European Charter of Local Self-Government, the principles of subsidiarity, universality and financial self-sufficiency of local self-government [*Finansy...*, 2008].

Among the significant problems facing the newly formed united territorial communities today is the lack of a legislative definition of the mechanism for the transfer of land outside settlements to the management or disposal of communities that are not regulated in the conditions of unification of territorial communities.

### 3. Improving the relationship between public authorities in the process of forming united territorial communities

In our opinion, the most acute is the issue of institutional uncertainty “district state administration – district council – united territorial community”, which are forced to coexist in one territory. In our opinion, the improvement of public power at the district level in the process of forming united territorial communities can be carried out if: postpone the reform of existing districts until the introduction of a new administrative-territorial division, i.e., until the amendment to the Constitution of Ukraine and approval of the bill administrative-territorial system. In addition, it is necessary to clearly define the powers left to the district state administration and the district council, to review the number and, accordingly, the costs of their maintenance, or to gradually consolidate the existing districts. In this scenario, the territorial reform will actually be carried out on the basis of the current administrative system, which is not entirely correct from a fundamental point of view. However, in the absence of a qualified majority in the Verkhovna Rada of Ukraine, the timeframe for amending the Constitution of Ukraine remains uncertain, and therefore, the gradual consolidation of districts under such conditions is more appropriate. As of today, only one bill has been registered in the Verkhovna Rada of Ukraine No. 4165 “On Amendments to Certain Laws of Ukraine Concerning the Functioning of District Councils”. The bill states that if the territory of the united community completely coincides with the territory of the respective district, the expediency and grounds for the functioning of the district council are lost. However, such a bill was not supported by the profile committee and the Main Expert Department of the Parliament, as

the idea of liquidating district councils on the grounds that the territory of the united territorial community coincides with the district does not comply with the Constitution of Ukraine. Such a situation is not taken into account in the Law of Ukraine “On Voluntary Association of Territorial Communities” [Proekt... rayonnykh rad].

In practice, funding for education, culture, and health care is transferred to local communities, while the facilities themselves remain state-owned. Therefore, if today there is a question of the transition of education, culture and health to OTG, and as we know this right is guaranteed by the Constitution of Ukraine, the guarantor, giving these functions in place, must create effective supervision. Local state administrations should remain as an institution of executive power, with reduced functions. We believe that administrations should be endowed with three important functions:

- 1) Ensuring control over the legality of the activities of local governments – if the local government has made a decision outside its competence, the head of the administration suspends this decision, appeals to the court to cancel it. If a local government body makes incompetent decisions that bankrupt the community or endanger the lives or health of citizens, separatist decisions, etc., the head of the local state administration requests the President to dissolve such a body and appoint a temporary government commissioner.
- 2) Coordination of the activities of territorial executive bodies (tax, architectural and construction, environmental inspection, police). That is, by transferring functions to local self-government, the state, through inspections, monitors compliance with norms and rules. Education is the competence of local self-government, but the quality of this education must be controlled by the state.
- 3) Activities in case of emergency or martial law. In this case, the system should work differently – strict centralization and implementation of all orders, during these periods, the head of the administration manages the territory and is fully responsible for it.

Regarding the activity of district state administrations in the new conditions, it should be noted that the Law of Ukraine “On Local State Administrations” does not provide for a mechanism for their liquidation at all. On June 23, 2017, the Verkhovna Rada of Ukraine registered a draft law “On Amendments to Certain Legislative Acts of Ukraine Concerning the Procedure for Formation

and Liquidation of Local State Administrations” [Proekt... administracii]. However, it was not supported by the Committee on State Building, Regional Policy and Local Self-Government and the Main Expert Department of the Verkhovna Rada of Ukraine, given that the only legitimate basis for the formation or liquidation of a local (and only district) state administration can only be a change. Administrative-territorial structure of Ukraine, as a result of which a new district is created on the territory of a certain region or one of the previously existing districts is liquidated. We believe that it is necessary to supplement the draft law “On the formation, liquidation of districts, establishment and change of their boundaries” with novelties governing the mechanism of formation, reorganization or liquidation of district state administrations when creating a new district by merging into one district two or more adjacent areas. In addition, it is necessary to prescribe the criteria for determining the center of the combined area.

The issues of financing local self-government bodies, including united territorial communities, remain relevant today. It should be noted that the purpose of the reform of local self-government and unification of territorial communities is to ensure the effective capacity of local self-government to independently, at its own expense, address issues of local importance in the interests of community residents. New associations of territorial communities, which began to form in Ukraine in 2015 under the Concept of Local Government Reform, faced problems with budget formation and efficient allocation of its funds to fulfill the main tasks of the territorial community to ensure the improvement of the territory.

Development budget funds are used to implement programs of socio-economic and investment development of the territory, related to investment and innovation activities, as well as to finance subventions and other types of expenditures related to expanded reproduction [Kolyshko, 2015]. Today, the issues of decentralization of the budget system of Ukraine are extremely important, because financial decentralization is one of the most important conditions for the independence and viability of local authorities.

Decentralization is the 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 center. It is usually carried out purposefully in order to optimize the practical solution of issues of national importance, as well as the implementation of specific regional and local programs [*Finansy...*, 2008].

#### 4. Risks and problems that arise in the context of local government reform and the mechanism for solving them

At the same time, determining the prospects for decentralization of power in Ukraine, researchers note the expected risks that may lead to this process. These risk groups include:

- difficulties that will arise during the revision of the boundaries of administrative-territorial units, which is likely to find its expression in the consolidation of territorial communities, in order to ensure their financial capacity;
- aggravation of the problems of the budget system, in the issue of financing the powers of local governments;
- weakening of state control of local governments over the implementation of powers that will be transferred to them;
- reduction of the quality of local government and legitimacy of the decisions made, due to the low level of competence of local government officials and the imperfection of the system of selection for the deputy corps [Makarov, 2013].

When considering local government reform, it is necessary to take into account these risks and provide for the use of mechanisms to mitigate their negative impact. In turn, the emergence of certain difficulties will encourage the authorities to react quickly and find ways to solve existing problems.

At the present stage, attention should be focused on ensuring the implementation of the principle of subsidiarity as a means of overcoming conflicts of interest between local executive bodies and local governments. The principle of subsidiarity should be the basis for ensuring the division of powers during the reform of the territorial organization of power, the involvement of citizens in management decisions. In general, in order to strengthen local self-government, it is important to enshrine this principle in the relevant Law of Ukraine “On Local Self-Government in Ukraine”, the introduction of which will serve as a mechanism to curb centralization [Makarov, 2013].

The ability of regional and local government institutions to accept and implement decentralized powers seems more than questionable. Excessive politicization of appointments and management decisions leads to a violation of constitutional principles and mechanisms of government and local self-government. In the conditions of further activity of public authorities, strengthening the auto-

nomy of the system of local self-government is of great importance coordination of government, which in turn requires strengthening the rule-making capacity of government structures, the ability to adopt and implement standards in the context of integrated public administration systems. It is through the rules of law that coherence in the work of various public authorities and their structural units is ensured.

Organizing the territorial organization of power in Ukraine to improve the efficiency of local issues, creating better conditions for socio-economic development of territories requires identifying further steps to strengthen the position of local government at the regional and district levels, review the functional load and organizational structure of local executive bodies. Solving the problem of division of powers between public authorities and local governments to the essence of the rule of law, democracy and civil society will achieve a balance of interests in the system of relations state-region-territorial community.

## 5. Conclusions

Thus, we can conclude that decentralization opens up significant prospects for ensuring the capacity of local self-government, to address issues of local importance, in particular to increase the role of citizens.

The main problems of interaction between local state administrations and local governments in Ukraine are:

- 1) Significant limited self-government in Ukraine as a right and opportunity of the territorial community, except for cities of regional and national importance: at the level of districts and oblasts due to lack of proper legal status of the community and its own executive bodies and, accordingly, own resources; at the basic level – due to lack of sufficient material resources and limited budget independence.
- 2) Ambiguous effect of granting village, town and city councils a large number of powers, in particular the provision of social services. On the one hand, it meets the requirements set for Ukraine by ratified international instruments. On the other hand, such a list of powers causes a large number of expenditures from local budgets, which leads to a decrease in the financial capacity of local communities. – Imperfection of the system of control over the activities of local self-government bodies. Local state administrations have the right to control only the implementation of delegated powers,

the Accounting Chamber of Ukraine has the right to control the activities of central public authorities, and supervision by the Prosecutor's Office of Ukraine provokes remarks from international organizations of which Ukraine is a member.

- 3) Compensation for the imperfection of legal mechanisms for monitoring the compliance of local governments with the Constitution of Ukraine and other regulations through the informal influence of state administrations through financial (budgetary) dependence of local governments on local administrations, which is also a potential source of conflict. The experience of the member states of the European Union is that: The problem of the relationship between local governments and the state represented by local state administrations is solved on the basis of the principle of subsidiarity – the performance of higher authorities of those functions that cannot be performed administrative-territorial division.
- 4) Local state administrations perform functions exclusively in the sphere of state competence, and as a rule do not assume the responsibilities of executive bodies of local self-government; at any level where there is an institution of local self-government, executive bodies are formed by representative bodies to perform such functions. The most important task of local state administrations is usually to control the activities of local governments: in terms of their own functions of local government – in terms of legality, and in terms of powers delegated by the state – in terms of expediency and effectiveness of decisions. State administrations may also be empowered to coordinate the work of territorial subdivisions of central specialized executive bodies and in the field of measures to protect the interests of the state (mobilization of the population, implementation of patriotic education).
- 5) Ensuring the financial capacity of local communities is a mandatory element of empowerment of local self-government. To this end, the state guarantees the revenue base of the budget, which includes local taxes and fees, the use of communal property, mandatory contributions to local budgets of state taxes, as well as subsidies and subventions from the state budget.

Thus, the main principles of reforming the system of territorial organization of state power are: preliminary stabilization of the property system and restoration of the level of revenue of state and local budgets, which existed before the market transformations, reform of administrative-territorial division of the state.

This reform should provide for the reduction of the categories of administrative-territorial units, as well as the consolidation of small territorial communities in order to increase their financial capacity. Clear political, legal and institutional separation of executive powers at the regional and subregional levels. The interaction of local state administrations and local self-government bodies should be based on the principles of maximum dilution of their functions. All issues that are within the competence of local self-government and are currently delegated to state administrations should be transferred to the newly created executive bodies of the relevant councils. State administrations should be assigned functions that fall within the competence of the state.

Ensuring the process of decentralization and improving the mechanism of relations between public authorities should begin with amendments to the Constitution of Ukraine (regarding the decentralization of power). Accordingly, the Law on Local Self-Government in Ukraine will need to be amended, the Law on Local State Administrations will expire, which will require regulation and detailed regulation at the level of a special law on the status of prefect, and in the future, it is desirable to adopt the Law on Regional Status municipality. In general, it is necessary to establish rational relations between local executive bodies and local self-government bodies, as well as on the basis of the principle of subsidiarity to clearly delineate the powers between local self-government bodies of different levels.

Direct inter-budgetary relations should be established between the budget of the united territorial community and the state budget. This guarantees to the united territorial community the amount of inter-budget transfers calculated for all local government budgets using a universal formula. However, the volume of such inter-budgetary transfers should be sufficient to finance primarily the social sphere of the united territorial community, as it is much more difficult to obtain financial support from the united territorial community for such purposes from other types of budgets.

A special governmental body, which should be established under the Cabinet of Ministers of Ukraine according to the principle of project structure, should play a leading role in ensuring organizational measures, coordination, scientific and analytical support, and monitoring of reform results. The interaction of public authorities on the ground will be carried out by the representations of this body, which should also be designed as project structures.

In general, it is very important nowadays that the reform of the public administration system takes place at a faster pace.

The system must not only respond to the challenges of time, but also predict future needs, be ready not only to respond to socio-economic changes, but also to program them.

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