

EXPERIENCE OF UKRAINE AND THE EU COUNTRIES IN IMPLEMENTING DECENTRALIZATION

^aTATIANA DERUN, ^bLIUDMYLA VASECHKO,
^cMYKHAYLO NAGORNYAK, ^dSVITLANA SHOSTAK,
^eANDRII HAVRYLOV, ^fKYRYLO MURAVIOV

^aTaras Shevchenko National University of Kyiv, ^bKremenchuk Mykhailo Ostrohradskiy National University, ^cVasyl Stefanyk Precarpathian National University, ^dInterregional Academy of Personnel Management, ^fHigher education institution «Interregional Academy of Personnel Management»
 email: ^aderunt@ukr.net, ^blyudichek@gmail.com,
^cnagornyakmm@gmail.com, ^dshostak.sveta@gmail.com,
^eandrii.havrylov@gmail.com, ^fdonkirill@ukr.net

Abstract: The purpose of the article is to identify the fundamental legal framework for decentralization in the EU and Ukraine and the main problems of their implementation in the state system of the EU countries, which must be taken into account in developing the state system of Ukraine. The study of the current situation of the decentralization consequences in Ukraine showed the main problems, which include the lack of legal support for decentralization, the development of legislation on the administrative and territorial organization of Ukraine, problems with land management, lack of state supervision over the legality of local government decisions. Finally, the study is summarized in solving problems by developing the legislation in Ukraine and its adaptation to European experience and standards..

Keywords: decentralization, EU, Ukraine, legal framework JEL Classification: H11.

1 Introduction

The current stage of formation of European countries is characterized by the use of the most optimal models of government, which are well accepted by the population and are convenient for the countries financial and economic system. A necessary condition for the stable development of society and the effective functioning of the state is to ensure a balance between national interests, the interests of the population of regions, and territorial communities. European practices of the state system show that the decentralization of authority is one of the effective tools for modernizing the public power system, and its successful implementation creates the necessary organizational and legal prerequisites for further democratization of power relations. The idea of public authority decentralization is

implemented in different forms in the vast majority of developed countries (Bashtannyk et al., 2021). Generally, due to decentralization, the efficiency of public power has been raised to a qualitatively new level in many democracies. At the same time, in Ukraine, this idea is realized according to the peculiarities of the development of public and state institutions formed here. However, decentralization reform has been relatively recent, and the population of certain regions is still experiencing some of the inconveniences associated with it. In connection with the above, there is an urgent need for in-depth consideration of the concept of decentralization, the study of successful examples of decentralization in Europe, its legal regulation in European countries and Ukraine, as well as to identify problems of legal regulation of decentralization that exist today (Arhipenko, 2018).

2 Literature review

The issue of decentralization is widely studied in the scientific literature. Each author considers it from the point of view on the object of decentralization. Therefore there are different approaches to the definition of “decentralization”, and the most valuable among them are:

- independence in approaches to management (Odintsova *et al.*, 2002);
- transfer of some part of the public administration functions of central executive bodies to local executive bodies (Obolenskij, 2005);
- transfer of part of functions and powers from higher levels of government to lower to weaken or abolition of centralization (Malynovskij, 2005);
- the process of redistribution of power and competencies between the central and local levels (Kolyshko, 2003).

Let's consider this concept from the scientific point of view, having investigated scientific researches of Ukrainian and European scientists.

Table 1 – Approaches to the definition of “decentralization”

№	Author	Decentralization is ...
1	Decentralization.gov.ua	the process of transferring power and financial resources from the central to the lower levels of government, such as regions, provinces, districts, and municipalities. The term “process” means the direct participation of citizens in political and socio-economic activities, which should strengthen democratization in the future.
2	Gritsyak I. (1997)	the activity of independent local self-government as a result of the transfer of state powers. It 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.
3	Skuhaj, S. (2013)	the transfer of rights, responsibilities for the provision of funds for the performance of public functions from the central government to subordinate or autonomous authorities or organizations and the private sector.
4	Odintsova, G., Mostoviy, G., Amosov, O. (2002)	Decentralization is the appropriate compliance with the needs of functional society responsibility of different levels of government; independence in approaches to management taking into account the diversity of local features while maintaining unity in the main.
5	Faguet, J.-P. (1997)	the transfer by the central government of certain functions, with all the administrative, political, and economic attributes necessary for their performance, to local authorities, which are independent units and sovereign within the geographical boundaries or functional areas of activity defined at the legislative level.
6	Gibson, J. Ivancevich J. and Donnelly, J. (1991)	a process that involves the transfer of power to make decisions at the lowest possible level within the organization.
7	Lelechenko, A. (2017)	the delegation of powers, resources, and responsibilities from central to local, semi-autonomous public authorities and private business entities.
8	Litvack, J. (2004)	the transfer of power and responsibility for the performance of public functions from the central government to subordinate or semi-independent state bodies and (or) to the private sector.
9	Shemchushenko, Yu. 1999	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 relevant center.

Source: Developed by the authors.

Foreign experience shows the importance of decentralization for countries that are in profound changes in the system of

regulation of public relations. For countries in transition, decentralization is an effective way to change the essential

characteristics of society and has significant potential and prospects for local development (Baun & Marek, 2006; Feltenius, 2007; Baldini, 2014). The most effective reforms to decentralize public power have been in Germany, France, Poland, the United Kingdom, and Sweden. France's state policy on the organization of local self-government is implemented in two main directions: deconcentration – a more comprehensive delegation of state administrative functions on the ground, and decentralization – the transfer of state power to local governments. Thus, France began its path to decentralization as a unitary state with a strong bureaucracy. The modern French system of government is based on the principles of decentralization. The French reforms confirm that the central administration retains only those national functions that have general state character or those that cannot be delegated to local authorities according to the law (Kyiv City Council, 2017). The result of decentralization in Poland has been a clear division of functions and powers between state and local authorities. The Polish government is in charge of foreign policy, national security and defense, and the development of strategic directions for the country's development. For its part, local authorities consider such issues as:

- Economic development of the regions.
- Disposal of budget funds and property of the local community.
- Conducting an independent financial economy.
- Bringing the system of services to the population.

Thus, Poland's leading powers and financial resources are at the level of territorial communities that have the opportunity to address their development issues. Measures of the Polish government in the way of decentralization contributed to the growth of public investment, small business and civil society at the level of administrative-territorial units, which, in turn, had a positive impact on the living conditions of local communities members and significantly improved the economic situation. The decentralization of power in Poland has had a positive impact on the development of local communities and the country as a whole. The uniqueness of the Swedish experience lies in the fact that it initially laid down almost the highest level of decentralization of local government. Despite the already high degree of decentralization in local government, Sweden, together with Norway and Denmark, is conducting an experiment to expand the boundaries of local autonomy called “free local government”. The purpose of this experiment (which is part of the overall program for the development and transformation of the public sector as a whole) is to test in practice the various ways to intensify local government, take into account local conditions, and provide great opportunities for local communities and local authorities to influence local politics (Demchak, 2015). Given the experience of European countries, it can be argued that there is no universal model or methodology in the world that can be fully and unchanged applied during the decentralization of power in Ukraine.

After Ukraine gained independence in 1991, the state gradually took some steps to develop local self-government and empower the regions. Thus, in 1997, Ukraine ratified the European Charter of Local Self-Government. Over the next few years, several regulations were adopted that delimited and established the powers of individual regions of the state. In particular, such acts were the Constitution of the Autonomous Republic of Crimea, the Law of Ukraine “On Local State Administrations”, the Law of Ukraine “On Local Self-Government in Ukraine” and the Law of Ukraine “On the Capital of Ukraine – the Hero City of Kyiv”. However, all discussions and measures related to the reorganization of the entire system of public power in the state, as a rule, always concerned the redistribution of powers at the national level “President – Parliament – Government”, or transfer of powers from local governments to the level of district state administrations justifying this by the inability of the former to exercise the powers granted by law effectively. As one of the components of decentralization, administrative and territorial reform is one of the most unsuccessful transformation projects in recent Ukrainian history. The project was planned to be

implemented 15 years ago, but each government initiative did not end in real change. Following the Euromaidan events, the new Government launched the national project “Decentralization”, on April 1, 2014, approving the Concept of Local Government Reform and Territorial Organization of Government in Ukraine and identifying support for decentralization reform as one of the priorities. Thus, the real decentralization process began in 2014. It allowed for the formation, following the provisions of the European Charter of Local Self-Government, of a significant, effective and capable institution of local self-government at the basic level – united territorial communities (UTCs). The Government has approved long-term plans for the formation of community territories in 24 regions, covering the territory of the regions by 100% (Government portal, 2020). Since then, many laws have been passed at the state and local levels. This legislation considers the experience of European countries, but despite this, it is far from ideal. This fact forms the purpose of the study.

The purpose of the study is to identify the fundamental legal framework for decentralization for the EU and Ukraine, as well as the main problems of their implementation in the state system of the EU, which should be taken into account in building the state system of Ukraine.

3 Results

European experience convincingly shows that an effective decentralized system of territorial organization of public power and governance is an integral part of a modern democratic state governed by the rule of law. The institutional basis of such a system is effective local self-government and balanced regional development (Grojsman, 2015). An important document that regulates the basic principles and mechanisms of self-government in the member states of the Council of Europe is the European Charter of Local Self-Government. On October 15, 1985, it was adopted and opened for signature by the members of the Council of Europe. The main idea of this document is the decentralization of power and the application of the subsidiarity principle. According to it, higher administrative bodies have the right to solve specific problems only if local administrations cannot solve them. All types of local self-government bodies fall under the principles of the Charter. In recent decades, regionalism has gained international legal recognition. His ideas and regulations have been reflected in several international legal acts and implemented in the practice of individual states and intergovernmental associations. The main such act is the Declaration on Regionalism in Europe, adopted on December 4, 1996, in Basel by the Assembly of European Regions. An international organization represents almost 300 European regions with about 400 million people (Koljuh, 2015).

An important document is the Helsinki Declaration on Regional Self-Government of 2002 (Helsinki Principles of Regional Self-Government). It contains recommendations for building a system of regional self-government, taking into account the models and forms of regional self-government in Europe, traditions, and features of countries. It is envisaged to hold a dialogue at the European level with elected representatives of local and regional authorities to achieve unity in order to preserve and implement the ideas and principles that are the common property of European countries, successfully implemented in the areas of democratic governance.

The Utrecht Declaration on Good Local and Regional Governance in Troubled Times: Challenges for Change was adopted on 17 November 2009 by the 16th session of the Conference of European Ministers responsible for Local and Regional Government. The document contains recommendations and a list of priorities of particular common interest to Council of Europe member states in the field of local and regional democracy development for 2010-2013.

The relevance of the Utrecht Declaration is that, according to existing practice, the Council of Europe, in monitoring the local and regional democracy state in the member states, pays special

attention to the implementation of the guidelines and proposals contained in its thematic documents. Following in cooperation with all 47 of its members is also evidence of effective European integration development. The European Declaration of the Rights of Cities of 1992 and the European Charter of Cities of 1992, adopted to implement the Declaration's provisions, also play a vital role in forming and developing European standards of local self-government and the system of sources of municipal law. Some scholars point out that the sources of European legal standards for local self-government can be considered the recommendations of the Committee of Ministers or other Council of Europe (CoE) bodies. These recommendations are not legally binding and have direct legal consequences for the CoE member states. However, they have a so-called "moral authority", reflect the common position of European governments on this issue, and therefore influence the state to which they relate.

Recently, the international rule-making activity of the Council of Europe and other organizations in the field of municipal law has intensified. Thus, the Committee of Ministers of the Council of Europe is considering drafts of such international legal agreements as the Charter for Mountain Regions, which provides guidance on the harmonization of issues related to the development and conservation of mountain regions; European Charter of Regional Self-Government; Charter on the rights and responsibilities of citizens, etc. However, despite all the benefits of decentralization in Europe, scientists warn of the need to abandon its idealization. They note the following problems with this process:

- Inequality of territories because not all of them have the opportunity to finance their powers from their resources. Weak government agencies are forced to ask their people for additional financial efforts to the detriment of the life quality. To avoid this threat, decentralization is often accompanied by equalization associated with the redistribution of public resources. At the same time, economically strong territories often do not agree with such solidarity.
- Lack of support from the general population because many people do not understand the process of decentralization. Moreover, they often hinder it for fear of losing jobs and powers, as the decentralization process is accompanied by government reformation and changes in governance.
- High risks of corruption in the use of public funds motivate the issue of introducing mechanisms for monitoring the local government's activities, both by authorities and the public (Bogatyrjova, 2012).

Legal regulation of decentralization in Ukraine began with the adoption in 2014 of the Law of Ukraine "On Cooperation of Territorial Communities", which aimed to teach territorial communities the basic principles of cooperation and encourage them to unite further. The process of implementing the decentralization reform has entered an active phase with the adoption on 05.02.2015 of the Law of Ukraine "On Voluntary Association of Territorial Communities", which allows its first basic stage through the formation of territorial communities without amending the Constitution of Ukraine. In 2017, the Law of Ukraine "On Voluntary Association of Territorial Communities" and the Law of Ukraine "On Local Elections" were amended by adopting the Law of Ukraine "On Amendments to Certain Laws of Ukraine on Voluntary Association of Territorial Communities" on February 9, 2017. After determining the parameters, the newly created territorial community can be considered capable of moving to direct inter-budgetary relations with the State Budget of Ukraine. Due to the adoption of the Law "On Amendments to Certain Laws of Ukraine on the Status of the Elder of a Village, Settlement", the legal regulation of the status of the elder of a village or settlement was improved. The list of powers of the elder has been significantly expanded. It is not exhaustive and can be expanded in the regulation on the elder, which is approved by the Territory Community council.

Due to the adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Peculiarities of Voluntary Association of Territorial Communities Located in Adjacent Areas", obstacles to the first elections in Territory Community formed by territorial communities located in adjacent districts were removed. Prior to the adoption of this law, the Central Election Commission did not call the first elections in such Territory Community, citing the need to change the district's boundaries and refer the territorial communities that formed the Territory Community to one district.

It is important to adopt the draft "On Amendments to Certain Legislative Acts of Ukraine on Land Management within the Territory of United Territorial Communities (UTC)." It provides for the granting of UTC the right to dispose of land outside the settlements. Despite the large number of adopted regulations governing the decentralization process in Ukraine, there are several diverse problems. They concern organizational, personnel, and financial aspects and the legal regulation of decentralization in the state. Among the main problems of legal regulation of decentralization in Ukraine, it is necessary to note the following.

- Lack of a basic law "On the administrative-territorial system of Ukraine", which would prescribe the principles of state policy in this area, the construction of a new administrative-territorial system, as well as indicate the same criteria for administrative-territorial units at all levels;
- the absence of legislative acts that clearly define the separation of functions and powers between state, local executive bodies, and local governments;
- incomplete creation of a new version of the Law of Ukraine "On Service in Local Self-Government Bodies";
- non-adoption of the laws of Ukraine, which would regulate the management of land resources within the territory of the UTC and the expansion of types of urban planning documentation at the local level;
- lack of proper legislative regulation of state supervision over the legality of decisions of local governments (Baranov, 2018).

Successful implementation of decentralization reform requires the improvement of legislation in Ukraine regarding the expanded powers of communities and local authorities and ensuring control over their activities. The central element of economic and political reforms should be the development of the municipal economy, which means supporting entrepreneurial activity, the development of promising sectors and districts, promoting investment for the economic development of territories. Furthermore, local budgets should be independent, financially independent, have a balanced budget. Moreover, they must delineate the functions and powers between local, state executive bodies and local self-government bodies at the legislative level (Gavkalova et al., 2017; Mokhova et al., 2021). They also must address local problems and provide the population with a sufficient level of public services.

In addition, planning to join the EU, Ukraine needs to realize that European integration involves harmonizing national legislation with Europe. It is explained by the fact that EU norms are most consistent with the objectives of effective social policy, including through the introduction of decentralization in various spheres of public life.

4 Discussion

The issue of centralization is widely studied in the context of many individual countries, including the Czech Republic (Baun & Marek, 2006), Sweden (Feltenius, 2007), Italy (Baldini, 2014). It has been studied at various levels of government, in particular decentralization has a positive impact on the economic development (Carniti et al., 2019) of administrative services for the population (Halásková & Halásková, 2014); on the general development of the economy by reducing the cost of community services (Díaz-Lanchas & Mulder, 2021), ensuring social order (Mueller & Hechter, 2021), etc. Furthermore, decentralization is

considered as a tool for the development of cooperation between different countries, in particular, Bakushevych, Goshchynska, Martyniak (2019) were considered this issue in terms of cooperation between Ukraine and the EU. Research confirms empirically practical, economic benefits of decentralization for the state. For example, Wang et al. (2021) recently conducted an empirical study according to which decentralization strengthens the country's economic situation and has important fiscal significance (Trusova et al., 2019). In addition, decentralization is a tool to reduce corruption in the government (Kuhn & Pardos-Prado, 2021), unite local communities, and raise public awareness.

5 Conclusions

Given the constant development of public administration in Ukraine in the European direction, the legal basis for decentralization is based on the example of the reform of the state system in developed European countries. There is no single model of decentralization in the world because such reforms take place in accordance with the socio-economic development of the country and the demands of its population. However, the best example of the legal framework for decentralization is the example of Poland, where similar reforms have resulted in a clear division of functions and powers between state and local authorities, where the regulation of financial resources determines the welfare of the population. The fiscal aspect of decentralization determines its usefulness to the community, as only the people will be genuinely interested in developing the settlements in which it lives. In Ukraine, the decentralization process has been going on since 2014, and a number of legal issues related to its regulation have not been resolved yet. In particular, there is a lack of a legal framework that would allow for a clear delineation of powers between local and state authorities. The formed territorial communities are still working effectively, some of them lack managerial and financial resources, and therefore the reform continues to this day in search of more effective solutions. Integration must be carried out according to the population's needs, but taking into account EU norms, as this is a key requirement that will allow the country to adapt to European standards of living standards and public administration quickly.

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Primary Paper Section: A

Secondary Paper Section: AE