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ADMINISTRACYJNOPRAWNE ZABEZPIECZENIE KOMPETENCJI ORGANÓW WŁADZY WYKONAWCZEJ I JEDNOSTEK SAMORZĄDU TERYTORIALNEGO

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Adnotacja. Zbadano administracyjnoprawne podstawy kształtowania kompetencji organów władzy państwowej i samorządu terytorialnego w Ukrainie. Ujawniono treść podstawowych ustaw Ukrainy dotyczących organów samorządu terytorialnego i nowoczesne koncepcje ich działalności. Okazało się, że w Ukrainie nie ma jednolitej koncepcyjnej wizji statusu, kompetencji i odpowiedzialności organów samorządu terytorialnego. Ustalono, że ramy prawne funkcjonowania i rozwoju jednostek samorządu terytorialnego w Ukrainie tworzą akty normatywne i prawne na różnych poziomach.

Należy zauważyć, że wymaga poprawy normatywne i prawne zabezpieczenie działalności jednostek samorządu terytorialnego, w szczególności poprzez poszukiwanie skutecznych i racjonalnych środków zarządzania wpływem na ich funkcjonowanie. Chodzi m.in. o poprawę właściwych ram regulacyjnych i prawnych działalności jednostek samorządu terytorialnego, co przyczyni się do zaspokojenia potrzeb gospodarczych, politycznych i społecznych ludzi, stworzenia warunków dla ich harmonijnego rozwoju.

Słowa kluczowe: samorząd terytorialny, akty normatywne i prawne, regulacje prawne, uprawnienia jednostek samorządu terytorialnego, optymalizacja uprawnień.

ADMINISTRATIVELY-LEGAL SUPPORT OF EXECUTIVE GOVERNMENT BODIES AND LOCAL GOVERNMENT BODIES COMPETENCIES

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Abstract. The regulatory and legal principles of the formation of the competence of state authorities and local self-government in Ukraine have been studied. The contents of the key laws of Ukraine regarding local self-government bodies and modern concepts of their activities are revealed. It was found that there is no unified conceptual vision of the status, competencies, and responsibilities of local self-government bodies in Ukraine. It has been established that the legal framework for the functioning and development of local self-government bodies in Ukraine is formed from regulatory acts of different levels.

It is noted that the regulatory and legal support for the activities of local self-government bodies needs improvement, in particular by finding effective and rational means of managerial influence on their functioning. These include the improvement of the competent regulatory and legal framework for the activities of local self-government entities, which will contribute to the satisfaction of the economic, political, and social needs of people, and the creation of conditions for their harmonious development.

Key words: local self-government, legal acts, legal regulation, competencies of local self-government bodies, optimization of competencies.

АДМІНІСТРАТИВНО-ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ КОМПЕТЕНЦІЇ ОРГАНІВ ВИКОНАВЧОЇ ВЛАДИ ТА ОРГАНІВ МІСЦЕВОГО САМОВРЯДУВАННЯ

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Анотація. Досліджено адміністративно-правові засади формування компетенції органів державної влади та місцевого самоврядування в Україні. Розкрито зміст основних законів України щодо органів місцевого самоврядування та сучасні концепції їх діяльності. Виявлено, що в Україні відсутнє єдине концептуальне бачення статусу, компетенції та відповідальності органів місцевого самоврядування. Встановлено, що правову базу функціонування та розвитку органів місцевого самоврядування в Україні формують нормативно-правові акти різного рівня.

Зазначається, що потребує вдосконалення нормативно-правове забезпечення діяльності органів місцевого самоврядування, зокрема шляхом пошуку ефективних та раціональних засобів управлінського впливу на їх функціонування. Йдеться, зокрема, про вдосконалення грамотної нормативно-правової бази діяльності суб'єктів місцевого самоврядування, що сприятиме задоволенню економічних, політичних і соціальних потреб людей, створенню умов для їх гармонійного розвитку.

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

Introduction. By clause 1 of Art. 3 of the European Charter of Local Self-Government “local self-government means the right and real ability of local self-government bodies to regulate and manage a significant part of public affairs, acting within the framework of the law, by their competence and in the interests of the local population”. From this, it follows that the demarcation of the subjects of management, powers, and competencies of local self-government bodies and local state authorities in Ukraine acquires not only a legal but also a political character.

Confirmation of this conclusion is the essence of the concept of decentralization, which is given in the report of Professor Dr. R. Luiz (*De Mello, L., Luiz, R.J. and Borenstein, M., 2001:366*) on the topic: “Fiscal Decentralization and Management: A Cross-Continental Analysis”. Decentralization is defined as a political process of the transition of political powers and administrative functions of the system, economy, and management of this to sub-state levels of management, which have political and administrative autonomy. R. Luiz justifies the need for “institutional policy” aimed at the decentralization of political and administrative structures by highlighting three “advantages” of decentralization:

- granting and expanding the rights of citizens to participate in state management through political integration and self-identification;
- development of the system of “checks and balances” in the process of division of powers between management levels;
- the formation of institutional conditions necessary for the initiation, promotion, and implementation of “self-sustained” development at the local and regional levels and the foundations for the formation of civil society.

However, it should be emphasized that decentralization will be effective only if the scope of powers, resources, and responsibilities of self-governing subjects is sufficient for making decisions that are invariant to the powers and control functions of regional state authorities.

Analysis of the latest research and publications, in which the solution to this problem was initiated and on which the author relies, selection of previously unsolved parts of the general problem, to which the article is devoted. A separate question regarding reforming the competence of local self-government bodies and local executive bodies in Ukraine, in particular, regarding the essence and features of the competence of executive bodies, their structural construction, the concept, content, and types of decentralization, periodization, advantages and prospects of its implementation, organizational, legal and the financial principles of its implementation, the concept and grounds of delegation of powers, types of delegated powers, etc., are devoted to the scientific works of many domestic researchers, including N. V. Bodak, A. B. Hetman, E. V. Zhilin, G. O. Kovalenko, M. V. Kovalev, V. Roman (*Roman V., 2014*), M. Petrovskiy (*Petrovskiy P. M., 2020*), O. Shevchuk. (*Oleksandr O. Bryhinets, Ivo Svoboda, Oksana R. Shevchuk, Yevgen V. Kotukh, Valentyna Yu. Radich, 2020*), Pavlovich-Seneta J.P. (*Pavlovich-Seneta J.P., 2022*) and others. During the writing of the article, special attention was also paid to researching the scientific positions of foreign scientists, namely: Yombi, G. (*Yombi, G. Y., Chouaibou, M., Agoume, L. Y., 2019*), Serene Ho, (*Serene Ho, Pranab R. Choudhury, Nivedita Haran, Rebecca Leshinsky., 2021*), Dickovick, T.J. (*Dickovick, T.J., 2014*).

However, despite a significant number of works on the outlined scientific issues, a comprehensive study of the structure of competencies of executive power bodies and local self-government bodies in conditions of decentralization has not been conducted.

Material and methods of research Methodological center new research is a complex system of methods and methods of scientific knowledge, which allow to carry out of a comprehensive analysis of the subject of research and make appropriate proposals and recommendations. At the same time, the choice of conceptual approaches and methods is determined primarily by the interdisciplinary, complex nature of the research and the specifics of the chosen issue.

The general worldview basis of the research was the dialectical method of learning the phenomena and processes of social reality, which involves the application of general principles: objectivity, comprehensiveness, and historical approach. The application of this method made it possible to comprehensively, fully, and objectively investigate the role of environmental factors in the formation of the modern paradigm of executive power; to show the interdependence of the stability and changeability of social relations, the relativity, and mobility of the boundaries of the executive power's activity; reveal the relationship between the executive power and civil society; to understand much more deeply the content and essence of executive activity, which is considered in an organic connection with the activities of other branches of state power and their bodies

Formulation of the goals of the article (statement of the task). The purpose of the mentioned scientific research is to analyze the structure of competencies of the executive power bodies and local self-government bodies in the conditions of decentralization, to form their scientific conclusions and proposals for the improvement of the current legislation in this area.

Results and their discussion: The process of decentralization of state power, which is carried out for the development of local self-government, in the functional, institutional and structural context, is connected with the transfer (or delegation) by state power bodies of a part of functions with the granting of powers and competencies to local self-government bodies.

As noted by L. Aghabekyan (*Aghabekyan, Liana, 2017*): “the extreme importance of this functional limiter is that the local government is, on the one hand, a provider of services to the population, and on the other hand, a subject of power decision-making, which citizens must perform, it is determined by “objective law”, that is, by legitimate legal norms”.

However, the bodies of the legislative and executive authorities bypass the problem of the formation of the true legal personality of the territorial community, which, by the provisions of Art. 140 of the Constitution of Ukraine is the primary element of the system of local self-government. (*The Constitution of Ukraine dated June 28, 1996*) After all, granting a territorial community the appropriate amount of powers determined by their existential needs related to issues of local importance – actualizes the issue of effective decentralization, which is based on the formation of a system of competent powers of territorial communities and other subjects of local self-government, and the need to delimit powers not only between different levels of state authorities but also between different levels of local self-government bodies. Without a doubt, this is the only way to talk about decentralization, the purpose of which is proper regulation, regulation, and legitimization of the self-government model, by the principles of the European Charter of Self-Government (“*Carta-monitor: launch of a monitoring database of the European Charter of Local Self-Government*”, 2022)/

After all, there is a direct dialectical connection between competence and decentralization at the national level and competence and decentralization at the level of local self-government. In such a chain of procedural objectification, the key term will be the competence of local self-government bodies, as a system of authorized subjects – authorized bodies and self-governing subjects, as well as structures functioning at the local social level, formed by society itself to satisfy the collective, group and individual needs of its members.

We agree with the position of Roman V. (*Roman V., 2014:95*) that territorial communities are an exclusively decorative element of local self-government because a significant part of the powers of local self-government bodies are delegated powers of state executive bodies and therefore do not belong to the local community, other than these powers belong to the power sub-object, the creation, and legalization of which the territorial community has nothing to do – to the executive committees of local councils, which are formed individually by village, settlement and city heads.

To solve the specified set of tasks, the legislator faces several problems, the solution of which is possible through proper regulatory regulation and will contribute to achieving a positive result.

The main problem is that the legislator has not yet chosen an effective national model of local self-government. The basis of the national model should be the doctrine of local self-government, which will become a reference point in the process of its regulatory development and practical implementation [6].

Today, according to Art. 140 of the Constitution of Ukraine, such a doctrine is the community theory of local self-government, according to which the territorial community is its main subject. We believe that taking into account the high democratic potential of the theory, and its strategic and teleological advantages in the development of public power, it is necessary to preserve this practice by the legislator during the constitutional review orms

However, at the same time, the legislator should be warned against the attempt to first legislate the primary role of territorial communities in the Constitution of Ukraine, and then against such normalization of their powers and institutional competence.

After all, as soon as the question arises to which level of management to transfer these powers and resources to use them as efficiently as possible, the question of the idea, opinion, and content of decentralization reforms immediately arises.

We will remind you that the Constitutional Commission under the President of Ukraine in the process of developing changes to the Constitution of Ukraine in the field of decentralization proceeded precisely from these positions.

But, actually introducing decentralization, the developers of the constitutional changes do not use such a term in the text itself. The text also lacks a list of the basic principles of decentralization, except the principle of subsidiarity.

In our opinion, this approach is ineffective, since the systematic interpretation of constitutional changes regarding decentralization does not guarantee their effectiveness in the process of further standardization and clarification of constitutional provisions. That is, it is in the text of the constitutional changes that the strategic line of public decentralization, at least its main principles and forms of implementation, should be laid down.

Since the adoption of the Constitution of Ukraine in 1996 and legal acts regulating the activities of local self-government bodies, the permanent development of the local self-government system has stopped at the level of territorial communities and cities of regional importance. Since the majority of territorial communities were not only unable to implement the competence of local self-government, but also turned into its phantom model, which declaratively exists, but does not function (*Supporting Decentralisation in Ukraine 2021–2022 Official project launch meeting 11 May 2021*)/

This conclusion is confirmed by the fact that almost seventy percent of territorial communities are communities with a population of fewer than two thousand people, which objectively significantly complicates providing them with an appropriate list of administrative services. In sparsely populated communities, systemic problems arise with the provision of so-called complexes of communal services. That is, the issue of optimizing territorial communities, based on their real ability to provide adequate services to members, arises. Here, the capacity of local self-government directly depends not only on the number of residents but also on the degree of "fullness" of the respective territory, such as the functioning of kindergartens and schools, the availability of medical services, structures, trade, and transport infrastructure, etc.

Such a situation is unacceptable, because as noted by Prof. P.M. Petrovskiy (*Petrovskiy P., 2019*): "the transition of society from authoritarian to civil society, with the self-organization of communities, activity, and initiative of its representatives in defending their rights and freedoms, characteristic of the latter, is among the main prerequisites that determine the main changes in modern Ukrainian society and its opportunities for civilizational development".

In the context of the decentralization reform, local self-government faces competence challenges that require an effective and rapid response at the organizational and regulatory levels, namely:

- solving the problem of the economic inability of the majority of regional communities, and local self-government bodies to fulfill their powers and authorities (economic factors);
- solving the problem of limited resources for infrastructure investments in regional community development budgets (resource factor); – to effectively overcome the crisis of public infrastructure, which is threatened by wear and tear of heating, sewage, water supply networks, and the housing stock, which leads to the occurrence of man-made disasters (infrastructural factor);
- the need to carry out a "competence revolution", which is due to the lack of a clear distribution of powers between levels, bodies, and officials of local self-government, as a result of which we have duplication of powers, competition of competencies and many reasons for the emergence of competence disputes between the named subjects of different levels (competence factor);
- overcoming public distrust and alienation of local self-government bodies and the population, closedness, and non-transparency of activities, public administration, inefficient use of land resources, corruption, and paternalism in relations with the population (communication factor);
- overcoming the crisis of the personnel policy of the local government, the system of training, retraining, and advanced training (personnel factor) of officials, employees of the local government, and deputies of local councils;
- overcoming the insufficient level of social initiative and socio-economic development of the independent public sector that provides social, cultural, family, informational, and other services to the population, creating appropriate conditions for using the resource potential of this sector in local development (infrastructural factor);
- effective development of forms of direct democracy, which contribute to residents' acquisition of skills of direct participation in solving important local problems (democracy factor);
- overcoming the social disunity of territorial communities and not residents' ability to cooperate in solidarity with local self-government bodies and local executive bodies to protect their rights and interests and achieve common community development goals (motivational factor);
- overcoming the difficult demographic situation of the majority of territorial communities, which is characterized by the deterioration of the quantitative and qualitative parameters of personnel support (demographic factor).

The listed questions directly demonstrate the genetic connection between the phenomenon of decentralization of public power and the capacity of local self-government, given which constitutional modernization will take place, and the main directions that are currently being developed by the Constitutional Commission under the President of Ukraine.

However, there is psychological resistance on the way to the implementation of the mentioned directions, both from representatives of local self-government bodies and territorial communities. This is primarily caused by the absence of an effective model of local self-government organization; proper informational support of the implemented reforms; of social agreement between the political elite and different strata of the country's population regarding certain issues.

As noted by L. Gonzalez (*Christopher Dick-Sago, Jorge Miguel Lopo Gonçalves Andraz (Reviewing editor), 2020*), decentralization is, in its content, a political idea, which means that territorial communities receive a certain

political autonomy along with new functions and financial resources, which determines the onset of the corresponding economic autonomy.

In foreign scientific publications, the term "decentralization of power" is often called "municipalization" (Serene Ho, Pranab R. Choudhury, Nivedita Haran, Rebecca Leshinsky., 2021:76). In most countries, it takes the form of a general distribution of powers, which empowers local authorities to solve local problems within their competence with adequate financial and resource support and provision. Municipalization may have certain restrictions, which are set by the local councils themselves. In addition, state intervention in municipal affairs is usually limited by law.

During the implementation of the decentralization policy, first of all, the question arises of which way to decentralize the competence of the authorities: you can choose the deconcentration method – when the powers of the executive authorities are transferred to the level of the territorial community and belong to the scope of their powers, or you can choose the devolution method when the data competent powers are delegated by central executive authorities to the level of local self-government for a specified period.

Classical deconcentration is primarily an administrative concept, which means the decentralization of administrative functions. The most obvious form is the creation of special institutes of central administrative power at the local level. For example, the creation of ministries in the field, they are somewhat independent but subordinate to the ministries in the degree of subordination, which is a typical decentralization. Another important type of decentralization is the so-called limited municipalization when a part of state tasks is transferred to local authorities.

First, local councils are usually incompetent in solving these issues. Secondly, state monitoring and control over its implementation lead to direct intervention. Thus, local self-government bodies and their officials (mayors) act locally as agents of the central government and are part of the state administration. This also applies to the exercise of executive powers by the local self-government bodies of Ukraine, during which they are under the control and accountability of the state administration and act more as agents of the central government, rather than as institutions of territorial communities.

Conclusions from this study and prospects for further research in this direction. So, we conclude that the most effective model for Ukraine is the deconcentration of the competent powers of executive authorities with their subsequent delegation to local self-government bodies. Important in the mentioned process is the implementation of the principle of subsidiarity, which we consider the most effective instrumental method of decentralization, it ensures both the expansion of the competence of local self-government and its effectiveness and reality.

That is, it is the application of the principle of subsidiarity that determines the effective formation of the competence of local self-government bodies. Guided by this principle, social problems are solved at the lowest or most decentralized (farthest from the center) level, at which it is most effective: state executive authorities should play an auxiliary (subsidiary) and not a subordinate (subordinate) role, performing only those tasks that are not can be effectively implemented at the local level.

The specified principle acts as a kind of filter for separating the competence powers that local self-government bodies, formed by the territorial community at the local social level, can implement and has a significant positive potential for the development of the general competence of local self-government, and helps master new areas of activity and new powers in the process of growing their financial independence and capacity.

We see the prospects for further research on the mentioned topic in the coverage of several derivative aspects, first of all, the disclosure of the features of the application of the principle of subsidiarity in the process of decentralization, the outline of the prospects for expanding the scope of delegated powers of local self-government bodies.

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