**Administrative-territorial reform as a precondition for effective decentralization of power in Ukraine:**

**adaptation to the European standards**

Tetyana Karabin, Uzhhorod National University, Ukraine

**Introduction**

Today is an obvious need for a comprehensive administrative reform that would ensure decentralization of public administration in Ukraine. The discussions about methods and effects of decentralization do not stop in scientific sources, as evidenced by the content of National report “New course: reforms in Ukraine” (Heytsy, 2010); however, along with the intensification of the processes associated with the implementation of systemic reform of public governance in the country, they started to talk about this issue at the highest level of governance also.

The aim of modern reforms is preparing the state for global political, economic and cultural changes that are predicted in the coming decades, as Ukraine wants to become equal partner for EU countries. To achieve this objective, reforms in Ukraine should touch the modification of the state structure, the system of making power solutions and financing system.

**Theoretical background**

The decentralization research in Ukraine to some extent implemented in the works W. Averyanov (Factors of centralization and decentralization in structural and functional organization of the state administration, 1997), V. Bordenyuk (The Decentralization of State Power and Local Self-government: the Concept, the Content and Forms (Species), 2005), V. Campo, I. Koliushko, N. Nyzhnyk (Public administration in Ukraine: centralization and decentralization, 1997), M. Pukhtynsky (The problems of transformation the territorial organization and local authorities in the context of the constitutional process in Ukraine, 2012), M. Kharytonchuk (Decentralization of public administration as a factor in the democratization of social relations, 2000), V. Shapoval (Modern Constitutionalism, 2005) and others. Each of the researchers considered and analyzed the decentralization from the standpoint of his scientific interest and covered under his own vision problems that arise. But most of them emphasized the priority to the need to reform the system of power in modern Ukraine. The author's view of the problems associated with the implementation of decentralization of public administration in Ukraine and possible directions of their overcoming by legal means is given in this paper. Accordingly, the aim of the proposed paper is the means of legal mediation decentralization of executive power substantiation through outlining the current problems of the administrative-territorial structure and defining the legal ways of its improvement. These issues are of great practical legal significance, because their solution involves specifying strategic directions of state building process in Ukraine and ensuring rights and freedoms of citizens.

**Research methodology**

There are multiple definitions and understandings of decentralization actually. In general terms, the essence of decentralization is in distributing the functions and powers to implement a unified state power, which originally belongs to the people, among relevant authorities on the one hand, and state and local governments - on the other. The first case refers to the division of functions and powers to implement a unified state power primarily between the highest organs of state, which is reflected in the principle of division of powers into legislative, executive and judicial. This way of decentralization of state power, reflecting the principles of relations between the Parliament, the President and the government, is covered, as is known, the notion of «forms of government» (Bordenyuk V., 2005). In decentralized countries the power of making decisions is not concentrated in only one central authority, but in a multiplicity of authorities. But at the same time we should understand, that decentralization is the process of power delegating to public authorities or agencies that have legal personality themselves and are not hierarchically subordinated to the central authority. They are self-governing. Each of them, according to Seerden and Stroink (2002), is organized as a centralized body itself, which means that within this decentralized authority, hierarchy prevails from the top to the bottom. That’s why the interpretation of the term administrative decentralization as the process of broadening and strengthening the rights and powers of administrative units or lower bodies and organizations, while narrowing the rights and responsibilities of the respective center (Tikhomirov, 1995) is not correct in all cases.

According to the French administrative doctrine, close but not identical with the concept of decentralization is the concept of deconcentration of power. As Breban states (1988) the deconcentration is just a "technology of management", that means the distribution the state functions within the system of executive power, but also under decentralization involves the transfer of case management agencies that have a certain independence in relation to the central government. Deconcentration can also be seen as the first step in a newly decentralizing government to improve service delivery (Utomo, 2009).

Such understanding of the concepts of decentralization and deconcentration is generally accepted in the theory of European law today (Seerden and Stroink, 2002).

The decentralization classification on different forms and types can be made based on various grounds. Different typology of decentralization has been developed by Smith (2001) and Ribot (2004). According to Smith the decentralization divides into five basic forms, such as deconcentration, delegation, devolution, partnership, and privatization. Opposed to the previous point of view, Ribot separates decentralization from not-decentralization. Decentralization includes democratic decentralization and deconcentration, whereas not-decentralization comprises privatization and non-privatization.

According to Cohen and Peterson’s (1999) classification approach, the distinction is made between territorial decentralization and functional decentralization. Territorial decentralization is a process whereby the Constitution or an Act of Parliament attributes a rather general and vaguely described jurisdiction for a limited territory to autonomous authorities having a distinct legal personality. Seerden and Stroink (2002) add that this is realized by giving those authorities bodies that are directly elected by the citizens living on their territory.

The concept of “functional decentralization” or “decentralization by services”, as determined by Chapus (2001), refers to a form of government according to which the decision-making as to well-defined tasks of general interest is entrusted to an autonomous public authority having legal personality and enjoying a relative degree of financial independence from the central authorities (Seerden and Stroink, 2002), either parastatals under the control of the government or to units outside governmental control, such as NGOs or private firms (Cohen and Peterson, 1999).

**Results and findings**

With regard to the decentralization in Ukraine, it should be noted that the functional decentralization manifested here quite weak. According to the Law of Ukraine “On the Cabinet of Ministers of Ukraine” Cabinet of Ministers of Ukraine (Government of Ukraine) is the highest body in the executive branch[[1]](#footnote-2). It directs, coordinates and supervises the activities of central and local executive bodies. That means that all executive agencies, those who possess executive and administrative powers are in subordination (either direct or indirect) of the Cabinet of Ministers of Ukraine. That is, normative regulation and practice of government entities traced territorial rather than functional decentralization.

But in spite of that sometimes these concepts are mixed and replaced one another. We should note the fact that in Ukrainian scientific circles there is not enough clear idea about the types of decentralization and the characteristic features of each species. For example, recently in several major cities of Ukraine a series of roundtable discussions titled "Functional decentralization in Ukraine" was provided. However, the questions that became the subject of discussions and formed the basis of roundtable abstracts dealt mostly principles underlying the draft law on administrative divisions in Ukraine, identifying areas, where can act effectively authorities, principles of organization of local communities and others (Dnepropetrovsk: The government must become as close, effective and inexpensive as possible, 2014). It is obvious that these are issues that characterize the content of territorial rather than functional decentralization.

Thus, the issue of administrative decentralization in Ukrainian doctrine is reduced to the question of territorial decentralization of public administration. Practical aspects, namely, the legal regulation of the decentralization process, concern mainly the territorial component as well, that is the empowerment of local non-governmental structures, which are local self-government organs. In particular, this year the concept of local government reform and territorial organization of power in Ukraine was approved by the Cabinet of Ministers of Ukraine (dated April 1, 2014 р.), that contains software standards for the reform of local authorities and local governments[[2]](#footnote-3).

At the present time according to the Law "On Local Self-Government in Ukraine" at the district and regional level of organization and activity of self-governing bodies the representative organs (councils) do not have their own executive bodies and therefore have to delegate the implementation of their decisions to public state authorities (local administrations)[[3]](#footnote-4). The above fact leads to the transition of independent self-governing bodies de jure into the state-dependent de facto.

So, one of the directions solving problems associated with irrational system of local government is the providing in the laws, including the Law "On Local Self-Government in Ukraine" along with other elements of the system of local government that has developed within a single district and region, the presence of executive departments of districts and regional councils (executive committees, departments, management) and giving them executive and administrative powers. Consequently, that will cause the transition of local administrations to bodies that carry out mainly oversight powers over the implementation of executive and administrative powers of local self-government and separate local authorities.

Implementation of these program regulations will certainly be a real step in implementing the ideas of decentralization (in the form of the territorial decentralization) and deconcentration of state power in Ukraine.

At the same time we consider that the decentralization is not a one-time power transfer from the state government to the local governments, but a complex process that includes such elements as the ability of public authorities to transfer and local governments to receive and dispose of authority effectively; determining the powers that should be supplied; mechanism of transmission of the authority; mechanism of interaction of state and local governments; issues of territorial administrative reform and so on. That is the analysis of the problems of decentralization of power should be transferred to the level of analysis of its problem issues.

The first obligatory part of the decentralization process is the definition the powers in respect of which should be implemented decentralization. The difficulty of this issue lies primarily in the fact that the definition of a particular amount of powers, that must be transmitted, is not constant and may vary depending on the socio-economic and political situation in the country.

Besides, the determination of competence correlation of local and national authorities depends no less on other components of decentralization discussed above, namely, the capacity of public authorities to transfer and local governments - to receive and effectively dispose of authority, the existing mechanism transfer of authority and the mechanism of interaction of state bodies and local authorities.

However, despite the complexity of the issue, the starting point, in our opinion, should be the requirement of compliance with the Constitution of Ukraine, which laid the legal foundation for separation of powers of local authorities. In the 119th article of the Principal Act it mentioned the main activities of local administrations, and in 143d article - basic local issues[[4]](#footnote-5). The status Laws of Ukraine "On Local State Administrations in Ukraine" and "On Local Self-Government in Ukraine" that provide the constitutional separation of powers on lower level of legal regulation must not only comply with the Basic Law, but also follow his logic.

The constitutional regulation of the functions and powers of local public authorities conducted using both objective and functional principles. Accordingly, the laws "On Local State Administration of Ukraine" and "On Local Self-Government in Ukraine" define the powers of local state administrations and local governments primarily on the basis of objective competence. The regulation on the basis of functional governance accomplished only in respect of supervisory powers. Hence, most of the powers of local authorities and local self-governments are in related jurisdiction, which in practice leads to the problem of distinguishing between the powers of local public authorities, and therefore the implementation of decentralization of public administration and government in general.

Therefore, the solution of the problems outlined above shall not be limited by the distribution of branch powers among entities of higher and lower levels. First, decentralization has to apply to certain functions, in which appropriate "set" of specific powers is carried out. This approach will not only help to avoid a number of legal problems in the law implementation, but will response the basic norms of the Constitution.

However, as suggested, the territorial decentralization of public administration and reforming local authorities and local governments in the above manner should be done after the reform of the administrative-territorial structure of Ukraine. That should be explained as follows.

The transformation of local government in agencies that have their own executive bodies raises the questions of necessity the existence of district state administration branched system within the region. Since the monitoring activities of district state administration shall relate mainly the collection and analysis of information on the implementation of own and delegated local government powers, which is mainly the report analysis on the state and local programs, the implementation of national standards for providing social services, etc.; it is evident that a large staff of district administration workers with a jurisdiction on one or two dozen local communities only becomes unnecessary.

With regard to the issue of excessive fragmentation of communities in Ukraine, it should be noted that the country was formed by the 12 thousand of local communities, more than 6 thousand communities have less than 3000 residents of people, the 4809 communities have less than 1000 individuals and in 1129 communities there are less than 500 people each[[5]](#footnote-6). Most of them do not form the executive bodies of village councils, there are no government institutions, utilities and more. Local governments of such communities cannot practically carry out the powers provided them by law, so the additional decentralized powers of the government are not possible to fulfill.

However, the problem of excessive amounts of administrative baseline units can be partially solved by creating an effective legal mechanism of a voluntary association of several local communities into a one and also by a government encouragement of this process. The consolidation of district administrative units cannot be done by residents on a voluntary basis. Only the Parliament of Ukraine defines the territorial structure of the state according to constitutional norms. Therefore, we believe that the reform of local authorities and local governments, the implementation of decentralization of state power shall be developed alongside the draft reform of the administrative-territorial structure of Ukraine. The issue of legal status and competence of these bodies should also be associated with changes in their jurisdiction. Therefore, we believe that a reasonable and practically useful are those draft concepts of the administrative-territorial reform, which include reducing the number of districts and consolidation in the structure of the administrative-territorial division areas.

The need for administrative reform in Ukraine to ensure the success of the decentralization of power is determined also by the fact that at present the districts in Ukraine differ both in terms of area and population. In particular, Tachivski district of Transcarpathian region has a population of 172,389 people, and Perechyn district of the same oblast - 31 790 people. Accordingly, the first area is 1818 km², and the other – 631 km² (according to the data of State Statistics Service of Ukraine).

In addition, the feature of the territorial organization of power in Ukraine is the existence of regional importance cities. Their number varies and ranges from 2 to 18 in each oblast. Their characteristic feature is that the executive bodies of these cities councils are undertaking a range of functions that are performed by state local governments in urban areas and cities, that are not of regional importance.

That is the cities of regional significance have the right to self-government, and other towns and villages of the region depend on the district state administration. It follows that the right to self-government in different locations, with approximately the same infrastructure and the same need to provide services to residents, is carried out in different ways. This contradicts the principle of ubiquity of self-governing and also the norms of the Constitution of Ukraine, which does not provide local communities of different statuses.

Moreover, Antonenko, Kravchenko and Pittsyk (2005) state that the experience of reforms in Latvia and of Denmark the experience of Eastern European countries shows that the countries, that have successfully implemented a complex administrative and territorial reform, have been achieved a high level of socio-economic development and civil society. However, Tokar, Hontsiyazh and Nowakowski emphasize that the goal of reforming depends also on strengthening the system of local self-government (Administrative Reform. Polish experience for Ukraine, 2000).

One of the assumptions of administrative-territorial division of Ukraine is its compliance with the recommendations of the European Union on the Nomenclature of territorial units for statistical purposes. Since European integration processes of modern Ukraine moved from abstract definitions and statements to concrete actions is of big importance to follow the EU requirements and standards in the state building process.

The NUTS classification (Nomenclature of territorial units for statistics) is a hierarchical system for dividing up the economic territory of the EU for the purpose of the collection, development and harmonization of EU regional statistics, socio-economic analyses of the regions and framing of EU regional policies. The NUTS regulation defines minimum and maximum population thresholds for the size of the NUTS regions: NUTS 1 (3 million-7 million), NUTS 2 (800 000 - 3 million), NUTS 3 (150 000 - 800 000)[[6]](#footnote-7). For practical reasons the NUTS classification is based on the administrative divisions applied in the Member States that generally comprise two main regional levels.

To meet the demand for statistics at local level, Eurostat has set up a system of Local Administrative Units (LAUs) compatible with NUTS. At the local level, two levels of Local Administrative Units (LAU) have been defined: The upper LAU level (LAU level 1, formerly NUTS level 4) is defined for most, but not all of the countries. The lower LAU level (LAU level 2, formerly NUTS level 5) consists of municipalities or equivalent units in the 27 EU Member States.

Ukrainian oblasts almost meet the requirements of NUTS2, which is one of the reasons of pointlessness of changes at this level of territorial structure. Just two oblasts, Donetsk and Dnipropetrovsk, as of January 1, 2014 exceed these indicators (according to the data of State Statistics Service of Ukraine). That is why the focus in the reform should to be done in the part of sub-regional and baseline.

There is also a tactical reason not to focus on this level. A large number of qualified professionals, that are able to be active agents of reform, including territorial and local government reform, is concentrated in the oblast level. It is necessary to mobilize this resource and make these specialists participate in carrying out reforms of the existing local authorities.

**Conclusions**

Thus, we can conclude that decentralization, which is declared in state policy documents, to be conducted in the form of territorial decentralization, i.e. the transferring of powers and responsibilities to authorities that are directly elected by the citizens living on their territory. Territorial decentralization in Ukraine affects the distribution and redistribution of powers between local state bodies and local self-government, which necessitates changing the structure of the last by giving them the right to form executive bodies at all levels of management (including district and regional). Obviously, the above process must be preceded by the reform of administrative-territorial structure, which would lead into compliance the structure of administrative-territorial division with the extent of powers which should be vested and was conducted in accordance with the European Union requirements.

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