Analysis of the Legislative Framework Regarding Decentralization Reform in Ukraine in 2014-2021

Abstract. At the current stage, this scientific article, proposed by the author, analyzes the problems associated with the implementation of the reform of decentralization of power in Ukraine and the reform of local self-government bodies, in the context of the formation of the regulatory and legal framework for the period from 2014 to 2021.

This study of the already formed legal framework in this article shows the two-level phasing of the analysis. Let us give as an example, the "first stage", which, in turn, contains a description of the adoption of the concept of the reform of the decentralization of power (starting from 2014 to October 25, 2020 - the day of holding local elections in Ukraine on a new administrative and territorial basis). Next, we will consider it expedient to describe the "Second stage" (after October 25, 2020, which continues until now). Therefore, for this "stage" the most characteristic is the formation of laws, which are interconnected with the activities of newly formed communities and state authorities at the subregional level.

We big close attention to legal acts that have already been adopted and supported by the Verkhovna Rada of Ukraine, or are under consideration.

The article basically forms the fundamental knowledge about transformations, which quite clearly influenced the functions of social institutions, economic and political processes in Ukraine at that time. At this time, there is a list of extensive problems that need to be solved by adopting new and modern regulatory acts in order to achieve the primary task of the specified reform, which is the creation of ecological conditions for the development of the community and its territory, simplifying social and administrative services, transferring state financial and management authority to the basic level, demarcating functional modules between high levels of management.

Therefore, trend indicators of problems and the implementation of their improvement and analysis of the regulatory framework of local self-government

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reform and decentralization are also shown in this article. Regarding the further idea of implementation and completion of the decentralization reform, which should be formed, depending on the adoption of a number of normative legal acts and distinguish the main goal and vision, regarding the legislative definition of the basic principles of the administrative-territorial system of Ukraine, in the order of formation of borders (and their changes) administratively -territorial units and settlements.

In the main narrative of the article, it is said that the adoption of the regulatory legal acts highlighted by the author contributes to the strong creation of financial potential in united territorial communities, the development of highly effective local self-government and the territorial organization of state power to ensure the high-precision provision of the living environment of citizens, and the formation of the institution of people's rule.

It is emphasized that this reform is one of the most successful reforms, for the effective implementation of which it is necessary to adopt a number of normative and legal acts that would determine the administrative and territorial basis of Ukraine and fall within the framework of the amendments to the Constitution of Ukraine.

**Keywords:** Amendments to the law, decentralization, public administration, proposed changes, local authorities, state authorities, powers.

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**АНАЛІЗ ЗАКОНОДАВЧОЇ БАЗА ЩОДО РЕФОРМИ ДЕЦЕНТРАЛІЗАЦІЇ В УКРАЇНІ У 2014-2021 РОКАХ**

**Анотація.** На сучасному етапі, ця наукова стаття, що запропонована автором, аналізує проблематику, котра пов'язана з впровадженням реформи децентралізації влади в Україні та реформі органів місцевого самоврядування, щодо контексту формування нормативно-правової бази за період з 2014 по 2021 роки.

(після 25 жовтня 2020 року, який триває до цього часу). Тож, для цього «етапу» найбільш характерним є формування законів, котрі взаємопов'язані із діяльністю новоутворених громад та органів державної влади на субрегіональному рівні.

Вагому увагу надаємо нормативно-правовим актам, що вже прийняти та підтримані Верховною радою України, або знаходяться на розгляді.

Стаття базисно формує фундаментальні знання про перетворення, які досить чітко вплинули на той час на функції соціальних інститутів, економічні та політичні процеси в Україні. В цей час є перелік розглянутих проблем, що потребують вирішення нові та сучасні нормативні акти. Щоб досягти першого завдання, зазначеної, реформи – це створення екологічних умов для розвитку громади та її території, спростити соціальні та адміністративні послуги, передавши державним фінансовим та управлінським повноважень на базовий рівень, розмежувавши функціональні модулі між високими рівнями управління.

Тож, тенденційні показники проблемам та впровадженням їх вдосконалення та аналітики нормативно-правової бази реформи місцевого самоврядування і децентралізації, також показано у цій статті. Щодо подальшої ідеї реалізації та завершення реформи децентралізації, котра має бути сформована, залежно від прийняття низки нормативно-правових актів та викрите головну мету і візію, щодо законодавчого визначення основних засад адміністративно-територіального устрою України, в порядку утворення меж (та їх змін) адміністративно-територіальних одиниць і населених пунктів.

В головному наративі статті, йдеться про те, що прийняття значних автором нормативно-правових актів сприяє міцному створеню фінансового потенціалу у об’єднаних територіальних громадах, розбудові високоефективного місцевого самоврядування та територіальної організації державної влади для відтворення високоточного забезпечення життєвого середовища громадян, формування інституту народовладдя.

Закцентовано, що ця реформа є однією з найуспішніших реформ, для ефективного впровадження якої необхідно прийняти ще ряд нормативно-правових актів, які б визначали адміністративно-територіальну основу України та лягли в сонову напрацьованих змін до Конституції України.

Ключові слова: Зміни до закону, децентралізація, державне управління, пропоновані зміни, органи місцевої влади, органи державної влади, повноваження.

Problem Statement. From the beginning of the existence of independent Ukraine, a number of fundamental transformations were initiated at various stages of state formation, which to some extent affected the functioning of social institutions, economic and political processes in Ukraine.
The reform of local self-government and the processes related to the decentralization reform require an appropriate regulatory and legal framework. The main participants in this process are the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, and citizens who exercise their rights through associations in territorial communities. Formation of the regulatory and legal field began in 2014, with the adoption of the concept of reform of local self-government bodies and state administration. Seven years have passed since that time, but even now there are still a number of urgent problems that must be solved by adopting new regulatory acts in order to achieve one of the main tasks of the reform is to create favorable conditions for the development of communities and territories, to simplify social and administrative services as much as possible, to transfer most of the financial and management powers to the basic level, to clearly distinguish functions between different levels of management.

The problems of implementation and analysis of the regulatory framework of local self-government reform and decentralization were dealt with by a number of foreign and domestic scientists, whose scientific views were focused on the study of the domestic regulatory framework of decentralization reform and the development of new legislation for the effective implementation and functioning of local self-government bodies, namely: V. Avryanov, M. Baimuratov, O. Batanova, L. Bondarchuk, Y. Hanushchak, I. Drobot, I. Koliushko, V. Kuybida, V. Koltun, A. Tkachuk, I. Yaroshenka.

Aim. The aim of the article is a scientific and theoretical analysis of the state of regulatory and legal regulation and the implementation of the reform of decentralization of state power. Determination and analysis of further prospects for the formation of the national regulatory and legal framework.

Analysis of resent research and publications. The task of this research is to investigate and analyze the state of the legal framework of legislation related to the reform of decentralization of state administration and local self-government bodies. Analyze and determine further prospects for the formation of normative legal acts for the successful completion of the reform.

Decentralization reform is a key aspect of the transformation of social relations. Decentralization of power in Ukraine acts as a fundamental principle of the state policy of regional development, creates the possibility of effective implementation of institutional transformations. This reform has a direct impact on residents of territorial communities. An important factor of the reform itself is the change in the principles of exercising power at the local level, and the main stage of the reform was the unification of territorial communities, which led to a change principles and approaches to regional development policy in Ukraine.

In their scientific publications, B. Kalynovskiy and R. Kolishko draw attention to the division of decentralization processes into stages and phases. At the
first stage, a hierarchy of the structure of public authorities is formed, where powers are distributed [1, p.105].

Based on this, the first stage can be conventionally divided into two subsections, the first is the allocation of functional obligations, the second is the distribution of obligations according to the hierarchy of authorities, integrating the process of decentralization, in accordance with the principle of subsidiarity.

The second stage can be characterized based on the distribution of powers according to the management reform. The third stage is characterized by the legislative component of the implementation of the territorial policy of decentralization of management in Ukraine [2, p. 14].

The decentralization reform is carried out on the basis of the Constitution of Ukraine and relevant laws, regulations and principles declared by the European Charter of Local Self-Government, in particular the Law of Ukraine "On Voluntary Association of Citizens" defines the principles by which the reform of the sphere of local self-government takes place, namely: the rule of law, transparency, openness, legal, organizational and financial capacity of local self-government, partnership between the state and local self-government, sustainable development of territories [3]. These principles are mandatory in the process of reforming local self-government [4, p. 112].

The reform of decentralization and local self-government initiated in Ukraine is based on a large number of theoretical and legal norms and acts.

Decentralization of public administration on the basis of subsidiarity is today one of the leading principles of the European Union and other developed democratic countries of the world. The European Charter of Local Self-Government, which Ukraine ratified in 1997, is the fundamental document that defines the principles of local self-government and regulates its activities [5].

Decentralization of power was provided for by the Constitution of Ukraine, which states that it is one of the main factors of the territorial organization of power and administration in the state. [6, p. 141]. The Budget Code of Ukraine, namely the first edition, adopted on June 21, 2001, which for the first time recognized the principle of subsidiarity as the distribution of expenses between the state budget and the local budget, is a landmark for the reform of local self-government.

In our opinion, the development of the regulatory legal framework should be divided into two stages. The first stage and its chronological framework should be started from 2014, namely with the adoption of the concept of local self-government reform and decentralization of power. The upper chronological point of the first period, in our opinion, is the local elections on October 25, 2020, which took place on a new territorial basis. An important step in the implementation of the decentralization reform and the reform of the local self-government system is the "Concept of reforming local self-government and territorial organization of power
in Ukraine” approved by the order of the Cabinet of Ministers of Ukraine on April 1, 2014 [7]. It determines the ways and mechanisms of creation and further organization of power in territorial units. Implementation of the concept involves a plan of measures:

• development and decision-making regarding the principles of implementation of the decentralization reform;
• develop and make changes to the Constitution of Ukraine in terms of decentralization;
• to make changes to the Tax and Budget Codes of Ukraine, to implement financial decentralization and financial support of established communities;
• at the legislative level, regulate the issue of transfer to communal ownership of objects that were under the jurisdiction of other state authorities. The most thoroughly official vision of the decentralization reform is reflected in the State Strategy of Regional Development for the period until 2020, approved by Resolution No. 385 of the Cabinet of Ministers of Ukraine dated August 6, 2014 [8].

Decentralization as a mechanism for transferring powers to lower levels of state administration is considered here as the main component of state management of regional development, as a prerogative of the state. In this document, decentralization is interpreted as deconcentration – the transfer of power to other bodies at the local level of management. Based on it, the model of promising regions is built on the basis of decentralization, deconcentration and subsidiarity [9, p. 62-63].

It is worth noting that the approval of the State Regional Development Strategy for the period until 2020 made it possible to receive funding from foreign donors to support the social and economic component of the decentralization reform. A separate item of the agreement provided for financing for the implementation of reforms in the field of regional development and decentralization in Ukraine [10].

The Cabinet of Ministers of Ukraine adopted a number of strategies related to changes in the public administration system in the context of decentralization:

• reforming the system of state supervision (control);
• development of the system bodies of the Ministry of Internal Affairs of Ukraine;
• changing approaches to the system of public finance management;
• reforming the civil service system;
• development of the State Border Service in Ukraine;
• optimization of the system of executive authorities;
• changing approaches to solving the issue of professional training of civil servants at all levels;
• development of electronic governance in Ukraine;
• changes in the system of state supervision and control;
reforming the system of electronic services;
changes to the formation of public administration and local self-government policies [11, c. 13].

The key role in the implementation of the reform of decentralization and local self-government is the changes to the Constitution of Ukraine in the part of decentralization, where the main thing should be clear principles of the implementation of the reform.

The constitutional draft law introduced by the President of Ukraine on June 26, 2014 provided for changes to approaches to the formation of powers of state authorities and decentralization in particular.

The amendments to the main law of Ukraine developed by the temporary commission received favorable recommendations from the Venice Commission of the Council of Europe, which offered practical recommendations for their improvement. After consideration by the President of Ukraine on July 16, 2015, the draft of the Law of Ukraine on Amendments to the Constitutions of Ukraine on Reforming Local Self-Government and Territorial Organization of Power (No. 2217a dated July 1, 2015) [12]

On August 31, 2015, 256 deputies voted in parliament for preliminary approval of this bill. However, in the future, the Verkhovna Rada of the VIII convocation was not voted on.

Also, an important role for carrying out the reform and determining the general principles of regional policy in Ukraine is determined by the law "On the principles of state regional policy" [13].

The articles of this law define the principles of state regional policy as a component of the basis for carrying out reforms in Ukraine.

In order to solve problematic issues on the ground, the ability to combine the efforts of communities and their territories requires financial support, therefore, to solve these problems, the laws of Ukraine – "On the voluntary association of territorial communities" [14] and "On the cooperation of territorial communities" were developed and adopted [15].

Despite the fact that the Constitution of Ukraine provides for the possibility for residents of communities to voluntarily unite into a community (territorial), there is no mechanism for such unification.

The purpose of the Law of Ukraine "On the Voluntary Unification of Territorial Communities" is to define legal conditions and regulations that make it possible to strengthen the guarantees of the functioning of local self-government bodies according to the principles defined by the law, the formation of capable communities, sustainable and balanced development of regions, open and transparent use budget funds of different levels.
The Law of Ukraine "On Cooperation of Territorial Communities" was created using the best European traditions and experience. Its provisions determine the legal principles of cooperation between communities, as well as regulate the principles, forms, principles of its stimulation, financing and control. Termination of cooperation agreements and grounds for cancellation of the agreement are provided for.

Before that, there was a problem of unsettled implementation of cooperation between communities, only the pooling of common resources was provided for, but there were no legal norms for such cooperation.

At the end of 2015, with amendments to the Law of Ukraine "On Amendments to the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs" [16] and some other legislative acts of Ukraine regarding the decentralization of powers for state registration of legal entities, individual entrepreneurs and of public formations" permission was granted to transfer the registration of legal entities and individuals to executive bodies of councils of various levels [17, p. 105-111].

The law provided for the regulation of the system of state registration of local self-government bodies and the elimination of problems related to the legal regulation of legal succession of UTC (decisions, contracts, implementation of individual budgets before the adoption of a unified one, etc.) [18, p. 1-7].

The sphere of budget legislation has also undergone changes, the sources of income of newly created united territorial communities have been expanded, this became possible thanks to the adoption of the Law of Ukraine "On Amendments to the Budget Code of Ukraine Regarding the Enrollment of Individual Administrative Fees in Local Budgets" [19].

The Law of Ukraine "On Amendments to the Budget Code of Ukraine Regarding the Peculiarities of Forming and Implementing Budgets of United Territorial Communities" provides for new principles for implementing budgets of local councils, and provides for direct inter-budgetary relations between the UTC and the Ministry of Finance of Ukraine.

The Law of Ukraine "On Amendments to the Budget Code of Ukraine Regarding the Reform of Inter-Budget Relations" determined, in particular, the composition of the revenues of the formed communities.

The implementation of these norms in practice allowed to significantly increase the financial resources of local budgets.

In particular, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Status of Village and Settlement Headmen" [20] introduces the concept of "starostyn district" and defines it as part of the territory of the United Territorial Community (UTC) formed in accordance with the Law of Ukraine "On voluntary association of territorial communities", where several
settlements (village, settlement) are located, except for the center of the administrative center of the community, determined by the village, settlement, city council. This law defines the status and powers of the elder.

Just owing to the adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Features of the Voluntary Association of Territorial Communities Located in the Territories of Adjacent Districts", it was resolved the issue that for a long time prevented the CEC from appointing the first in the united territorial communities. The law defines the following: "...the formation of a united territorial community, which includes the territorial community of a city of republican significance of the Autonomous Republic of Crimea or of regional significance and the territorial community (territorial communities) of a village, town, other city of an adjacent district, changes in district boundaries are not needs; the decision of the Central Committee on the appointment of the first elections of deputies of the village, settlement, city council and the corresponding village, settlement, city mayor of the united territorial community is made before the change of the boundaries of the respective districts..." [21].

The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Voluntary Joining of Territorial Communities" resolved the problem of those communities that have not yet been included in the UTC. Now they had the right to join the neighboring community.

One of the main steps towards the further completion of the decentralization reform was the approval on August 30, 2017 by the Cabinet of Ministers of Ukraine of "Methods for the formation of capable territorial communities" [22]. This methodology defines the concept of a capable territorial community: "...A capable territorial community is a territorial community of villages (villages, towns) that, as a result of voluntary association, are able to provide the appropriate level of service provision independently or through the relevant local self-government bodies, in particular in the field of education, culture, health care, social protection, housing and communal services, taking into account human resources, financial support and infrastructure development of the corresponding administrative-territorial unit...".

The definition of the center of the community is provided: "...the potential administrative center of a competent territorial community is a settlement (village, settlement, city), which, as a rule, is located closest to the geographical center of the territory of a competent territorial community and has the most developed infrastructure...".

One of the criteria for the accessibility and ubiquity of local self-government is the accessibility zone: "...the accessibility zone of a potential administrative center of a capable territorial community is the territory around a potential administrative center of a capable territorial community, which is determined taking into account the availability of services in the relevant areas on the territory of such a community...".
In order to activate and improve the process of approving long-term plans and creating united territorial communities, the Verkhovna Rada of Ukraine on December 5, 2019 adopted amendments to the Law of Ukraine "On Voluntary Unification of Territorial Communities" (regarding simplification of the procedure for approving long-term plans for the formation of territories of communities of the Autonomous Republic of Crimea, oblasts).

One of the key normative legal acts of the development of the reform was the State Strategy for Regional Development for the period until 2027, the strategic goal of which is development and unity, focused on people — a dignified life in a united, decentralized, competitive and democratic Ukraine. The strategic goal of the state regional policy until 2027 is achieved on the basis of three strategic goals:

I. Formation of a united state in social, humanitarian, economic, ecological, security and spatial dimensions.
II. Increasing the level of competitiveness of regions.
III. Development of effective multi-level governance.

In accordance with this strategy, on July 17, 2020, the Resolution on the formation and liquidation of districts [23] was adopted, according to which the administrative-territorial system underwent significant transformations, as required by the Concept of Local Self-Government Reform and Decentralization of Power in Ukraine, namely: a new administrative- the territorial system provides for a three-level system: community of UTC-district-region. Ukraine will consist of approximately 1,400 communities, 100 districts, 24 regions, the city of Kyiv and the Autonomous Republic of Crimea.

Such a legislative initiative was the adoption of draft law No. 3614 [24] thanks to which, starting in 2021, the newly formed communities switched to direct inter-budgetary relations with the state.

The adoption of draft law No. 3651-d [25] was an initiative that simplified the solution to the issue of legal succession in communities and the transfer of objects of joint ownership to communal ownership. This law regulates the issue of legal succession of communal and state property, budgetary resources, rights and obligations, and also enables the creation of district state administrations in new districts, which is a significant step towards speeding up the completion of this reform.

At this stage, consultations and public discussions are ongoing on the development of a new edition of the Law of Ukraine on Local Self-Government, among the main novelties it is envisaged:

- Communities must adopt a charter that will become a local normative legal act that will establish the procedure for implementing the right of local self-government;
- Distribution of own and delegated powers of basic level local self-government bodies will be carried out;
An exclusive list of local government powers was provided - radiation safety, chemical safety, border protection;

The emergence of a new department that will be subordinated to the secretary of the council – the Community Council Secretariat. The main tasks of which will include the organizational work of the activities of the council and permanent commissions, which is currently being handled by the secretary of the council.

Therefore, the second stage of the formation of the legal framework, which began on October 25, 2020, continues to this day, there are still a number of gaps and white spots that are not defined by the legislation, which the draft laws are intended to solve and are highlighted in this article.

Conclusion. Further implementation and completion of the decentralization reform will depend on the adoption of a number of normative legal acts, which include changes to the Constitution of Ukraine in the area of decentralization, adoption of a new version of the Law of Ukraine "On Local Self-Government". The development of the law "On the principles of the administrative-territorial system of Ukraine", the purpose of which should be the legislative definition of the basic principles of the administrative-territorial system of Ukraine, the procedure for the formation, liquidation, establishment and change of the boundaries of administrative-territorial units and settlements, which, in our opinion, is necessary it was adopted first of all, and then on the basis of the provisions of the law to form a new administrative and territorial system, and not vice versa, draft law No. 4535, which regulates the issue of the appointment and activities of the headman in communities, determining the number of residents of the headmanship and the status of the headman [26], draft law No. 5066-1, which is designed to increase the percentage of the income of individuals included in community budgets from 60% to 65% [27].

Adoption of the above-mentioned legal acts will strengthen the financial potential of united territorial communities, contribute to the construction of effective local self-government and territorial organization of state power for the creation and proper support of the living environment of citizens, the formation of the institution of people's rule.

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