COMBINING OF LOCAL COMMUNITIES IN MEASURES OF DECENTRALIZATION IN UKRAINE

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Abstract

This article highlights the problems of communities united under decentralization in Ukraine. Decentralization is a key to effective territorial development and the path to democratization as well as real democracy. Therefore, Ukraine urgently needs to ensure communities to have the right credentials and be able to implement them in the transfer of responsibilities and resources to lower levels of public administration by the central government. In order to weaken the centralization of power through decentralization so it would not lead to growth of the arbitrariness of local officials and growing public dissatisfaction with the government. And so, the government should create a legal and financial framework that would assure the possibility of local governments united communities and so they can have their own funds and powers to effectively address local issues.

Keywords:
decentralization, integrated territorial communities, local government reform, democracy, Mayor.

JEL Classification K10, K19

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The success of any reform in the country depends on understanding of its contents by all the participants of such relationship but misunderstanding of the reform plan by the subjects of its implementation generates opposition and therefore boycott.

Internal political development of the country and foreign situation around Ukraine exacerbated the issue of decentralization of power, which serves as a form of democracy that allows the preservation of the state and its institutions to expand the local government in order to intensify people to address their own needs and interests, narrow the scope of the state's influence on society by replacing the mechanisms that influence self-produced by society, reduce governmental spending, and the tax for the maintenance of the state apparatus, etc. [8].

The problem of decentralization of power in Ukrainian theory of constitutional law and state practice has always occupied an important place since Ukraine became independent. Especially this problem intensified in 2014. So, on April 1st, 2014 by the Cabinet of Ministers of Ukraine conception of reforming local self-government and territorial organization of power in Ukraine was approved (hereinafter Concept) [6] and the Action Plan for its implementation was approved (CMU №591-r of 06.18.2014) [7].

Thus, the foundations were laid for the realization of the reform of local government, which is the part of the decentralization process in Ukraine.

Decentralization is a term that means transferring of power by the central government to local governments. In other words, decentralization will ensure the rights if the communities to have the powers and to be able to implement them during the transfer of responsibilities and resources to lower levels of public administration.

And since the local government reform provides the transfer to local budgets a part of national taxes, creates the economic interest of the community in the development of new industries, support of business, economic development in general, that is why the implementation of decentralization requires the simultaneous introduction of many reforms such as legal, financial, administrative and others.

Besides, the experience of such unitary states as Denmark, Norway, Sweden, Poland, the Czech Republic, Estonia, France, shows that transfer of significant powers from state agencies to local governments, provided strengthening of local government and consequently led to the removal of artificial obstacles (excessive permissions instance, excessive control center) for business and entrepreneurship, creation of a transparent investment...
climate and the opportunity to be financially independent (because of money and resources) communities, more effectively address issues of local importance for the citizens and the development of their areas.

For the pursuance of the Plan of the implementation of local government reform in Ukraine changes into the Budget and Tax Code of Ukraine were included. By these changes stimulation of the communities was provided in order to unite and increase their ability through a mechanism of transition from combined community budgets to direct intergovernmental relations with the state budget.

February 5, 2015 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On voluntary association of communities" №157-VIII of 02.05.2015 - (hereinafter - the Law №157) [1], which regulates relations arising in the process of voluntary association of municipalities, villages, towns and cities.

Cabinet of Ministers of Ukraine to ensure the implementation of the Law of Ukraine "On voluntary association of communities” approved methods of forming of capable local communities (act of the CMU №214 of 04.08.2015 - further Technique) [4]. These acts define the conditions of association of communities.

During combining, such communities will be given considerable powers and resources same as in the cities of regional importance. In particular, those communities that show a wish to unite will get admission to their local budget 60% of income tax. With additional resources in the reform local councils will get their own land tax, rates on its territory which each council set on their own. During this process state owned lands are transferred to the jurisdiction of the unified Community transferred, except for some public lands that can not be owned. Also, required local property tax is established. The decision about its introduction and its rate each local council also adopts its own. The community also receives 5% of the sales of fuel, alcohol and tobacco products and remains pre-existing local taxes and fees. Instead, municipalities that do not take part in the association will lose the right to direct relations and resources.

What are the capable municipalities? Capable municipalities are territorial communities of villages (towns, cities) that result from voluntary associations which are able on their own or through the appropriate local authorities to ensure the proper level of service, particularly in the fields of education, culture, health, social security, housing economy, considering the human resources, financial support and infrastructure of an administrative-territorial unit.
So, local governments must provide to a wealthy local community the necessary public services, to be the administrative center for the provision of public services. To the combined community centers (closer to the citizens who live outside the district centers) places where a number of important services are provided - administrative, social assistance through territorial centers, fire, law enforcement, health service and others will be transferred from district centers. In case of shortage of establishments and other infrastructure all necessary services to communities will be given from the state budget for the acquisition or construction.

After consolidation of citizens, human settlements, included in the integrated community have not only the deputies in the council of the united community, but also a representative - the elder of the executive body representative council of the united community. Chiefs and deputies will carry out the communication between fellow villagers and government of the communities and will solve different problems in its residents as well as on the board and executive committee. Warden is elected in villages, towns determined by the decision of the local council of the united territorial community for a term of office of the local council. At the very administrative center of the united community mayor is not elected. Until the election of the village elder (monitor) takes part the previous elder is doing all the duties. (Art. 14¹ of the Law of Ukraine "about local government in Ukraine") [2]. Local governments of the united territorial communities are successors of assets and liabilities (liabilities) of the former local government of communities that are included in the association.

Association of capable communities is reproduced in the Perspective plan of forming of communities (perspective plan - on), developed by regional administrations and regional councils approved by the Cabinet of Ministers of Ukraine in accordance with Article 11 of the Law "About voluntary association of communities" №157 and must comply Techniques and cover the whole territory of a region. This limits the principle of voluntariness that laid down in Article 2 of the Law №157, because the state actually causes the community to unite in the format specified by Perspective plan, not as the communities themselves want.

In our view, this situation has arisen because the first draft law "About voluntary association of communities" and the Law "About cooperation of local communities" was developed with the participation of Ukrainian and international experts. They have been widely discussed and received Council of Europe expertise in 2012-2013. However, in contradistinction to the draft law "About cooperation of local communities",...
draft "About a voluntary association of communities" after its submission to the Cabinet of Ministers of Ukraine has been significantly changed which as a result, in practice, lead to that some communities which united and elected new board of the combined communities in local elections 2015 do not meet the Perspective plan at all or partially match the Perspective plan.

So, the question arises whether citizens who joined outside the Perspective plan or partially meet the Perspective plan (e.g. five villages provided for in prospective terms, united only 2 villages) can receive direct intergovernmental relations and other benefits? A clear answer to this question legislator does not give. Although we believe that the experience of foreign countries should be applied here, including Latvia or Finland, first of all we should maximum encourage voluntary association, and then promote involuntary territorial and functional reform.

In addition, territorial communities of villages, towns, cities that voluntarily joined together in a territorial community have the right to withdraw from the Joint territorial community (secession) in the manner prescribed by law, this is provided in part 3 of Article 6 of the Law of Ukraine "About local government in Ukraine". However, the problem is that in Ukraine there is no law that would ensure practical implementation of the right to secession, for example through local referendum.

All in all, in accordance with national legislation, Ukraine has the following territorial structure of the Autonomous Republic of Crimea; Regions (Regions 24/24 regional councils); districts (490 districts / 488 district councils); Cities (460 towns / 458 municipal councils); in urban areas (55 urban district councils in 25 cities); settlements (1180 settlements / 783 village councils); villages (27,214 villages / 10,279 village councils) [5].

In Ukraine, most rural councils are actually subsidized by 90%. And the resources that they have are enough only to keep the administrative apparatus, so it is necessary to change administrative divisions. How can this be done? There are two ways: one way which was used by Slovakia, Poland, Latvia, and Denmark. They passed a law to change the administrative-territorial structure at the state level. Government fulfilled its decision and changed the administrative divisions. Questions administrative-territorial structure is considered to be the question of the state, not self-governing. But in Ukraine, the Verkhovna Rada does not have the political will to adopt amendments to the Constitution of Ukraine in part of the decentralization and adopt a special law on administrative divisions. So, we went the other way, which was used by Latvia in 1999, Denmark in 1970. They adopted a law on voluntary association of communities. In Denmark such law was
passed in 1970 among more than two thousand municipalities that existed in Denmark, joined more than a thousand. In Latvia, a law was passed in 1999. By 2000 more than a half of local communities joined voluntarily. For those who have not united for 6-7 years, the government passed a separate decision to change the administrative-territorial system [3].

International experience confirms that even in successful politically, economically, socially countries (France, Britain, Italy, Poland) in the process of decentralization of power they faced big problems. This plan should ensure consistency in the implementation of this process, in particular, the authorities must ensure people's ability to participate in the management of socio-political and socio-economic processes in the country: the state should contribute to the strengthening of institutions of local government, their performance in order to ensure their self-governing functions.

CONCLUSION

At the end of 2015 in Ukraine 159 communities were formed in general. They need legal and financial framework in order to weaken the centralization of power through decentralization so this would not lead to growth of the arbitrariness of local officials and growing public dissatisfaction with the government. That is why the result of the reform of local government should be a possibility of local governments united communities to have their own funds and powers to effectively solve the problems of the local importance. So, in our opinion, Ukraine's parliament, is to accelerate the pace of law-making and adopt a number of legislative acts, first of legalize the Constitution of Ukraine the term "Joint Territorial Community" and the Law of Ukraine "About administrative divisions in Ukraine", "About local executive authorities in Ukraine", "About local referendum in Ukraine", "About local status of elders in Ukraine "also upgrade Laws of Ukraine" About Local Government in Ukraine "," About service in local government "to amend the tax and budget Code, Land Code of Ukraine and others.

BIBLIOGRAPHY

1. Law of Ukraine "About voluntary association of communities" dated 02/05/2015 // Data of Verkhovna Rada of Ukraine 2015.- № 13.- r.- St.91.


4. Methods of forming capable of communities approved by the Cabinet of Ministers of Ukraine of 04.08.2015. №214 // Official bulletin of Ukraine. - 2015 r. number 33, St.963.


6. The order of the Cabinet of Ministers of Ukraine "About approval of the Concept of reforming the local self-government and territorial organization of power in Ukraine" dated 01.04.2014r. // [Electronic resource]. - Mode of access to the portal: http://www.zakon0.rada.gov.ua

