

## DETERMINING MOVEMENTS OF PROJECT CHANGES TO THE CONSTITUTION OF UKRAINE REGARDING DECENTRALIZATION: FROM 2014 TO 2019

### ВИЗНАЧАЛЬНІ РУШІІ ПРОЄКТНИХ ЗМІН ДО КОНСТИТУЦІЇ УКРАЇНИ ЩОДО ДЕЦЕНТРАЛІЗАЦІЇ: 3 2014 ПО 2019 РІК

*This scientific article contains a broad analysis of the issues of constitutional reform in the territory of Ukraine, formed on the basis of the proposed changes to the Constitution of Ukraine in terms of decentralization of power (for the period from 2015 to 2019). The author provides a scientific description of the creation of executive committees of local self-government, which are expected by the heads of local councils. Further, this work assumes the principle of subsidiarity, which is the main factor in the distribution of powers in the system of local self-government. The main powers were to be concentrated at a low level (village, settlement, city).*

*General attention in the column is given to trending issues that examine the administrative-territorial system, the activities of local self-government bodies and executive authorities, and the powers of the President of Ukraine. This study aims to show the current Ukrainian system of work of territorial authorities, which generally slows down the development of local communities and complicates the distribution of state administration. In the process of this study, a comprehensive analysis of the proposed draft changes to the Constitution of Ukraine in terms of decentralization was carried out, and a number of fundamental changes are foreseen, which concern not only the administrative-territorial system, but also the executive power, local self-government and the powers of the President of Ukraine.*

*In addition, the author identified the general principles of constitutional changes, which are provided for in the draft Laws, regarding the introduction of amendments to the Constitution of Ukraine in the matter of decentralization of power. Therefore, constitutional changes regarding the reformatting of the territorial system and ensuring its compliance with the norms of the European Charter of Local Self-Government are necessary measures for the successful completion of the reform not only of decentralization, but also of other sectoral reforms.*

*The author of the scientific article proposed an analysis of changes in the provisions of the European Charter of Local Self-Government. In the course of his research, the main proposed changes to the Constitution of Ukraine in the area of the administrative-territorial system, activities of local self-government bodies and executive bodies were identified.*

*During the period of this study, the author concluded that the submitted amendments to the Constitution of Ukraine are a rather progressive step towards the completion of the decentralization reform in Ukraine and require their adoption as soon as possible. An important analytical indicator in this work was the analysis and strategy of Ukraine, the course towards European integration. Such an analytical approach necessitates the institutionalization of power and the identification of the introduction of an innovative modern model of state management and administration. The scientific description of world experience and modern*

*innovative models of social practices are also indicated. Which, as we can see, testify to the fact that the reset and further decentralization of power is one of the most effective mechanisms for the modernization of the domestic public administration system. Therefore, the issue of decentralization of power in Ukraine is more relevant than ever and needs an urgent solution.*

**Key words:** decentralization of power, proposed changes, changes to the Constitution of Ukraine, local self-government bodies, distribution of powers, reorganization of power.

*Наукова стаття містить широку аналітику проблематики конституційної реформи на території України на основі запропонованих змін до Конституції України в частині децентралізації влади (за період з 2015 по 2019 роки). Проаналізовано використання принципу субсидіарності, котрий є основним фактором розподілу повноважень у системі місцевого самоврядування.*

*Досліджено проблеми адміністративно-територіального устрою, діяльності органів місцевого самоврядування і виконавчих органів влади. Це дослідження, має за візію показати сьогодення роботи системи органів публічної влади. Здійснено місткий аналіз запропонованих проєктних змін до Конституції України в частині децентралізації, цим, і передбачається низка принципових змін, які стосуються не лише адміністративно-територіального устрою, а й виконавчої влади, органів місцевого самоврядування та повноважень Президента України.*

*Проаналізовано загальні засади конституційних змін, які передбачені в проєктах Законів, щодо внесення змін до Конституції України у питанні децентралізації влади. В процесі дослідження, було визначено основні запропоновані зміни до Конституції України в частині адміністративно-територіального устрою, діяльності органів місцевого самоврядування та органів виконавчої влади. Тому конституційні зміни щодо переформування територіального устрою та забезпечення його відповідності нормам Європейської хартії місцевого самоврядування є необхідними заходами для успішного завершення реформи не лише децентралізації, а й інших галузевих реформ.*

*Запропоновано аналіз щодо змін до Конституції України щодо децентралізації відповідно до положень Європейської Хартії місцевого самоврядування. Автором сформувано висновок, що подані зміни до Конституції України є досить прогресивним кроком до завершення реформи децентралізації в Україні та потребують якнайшвидшого їх прийняття, зокрема і в контексті євроінтеграції.*

**Ключові слова:** децентралізація влади, проаналізовані зміни, зміни до Конституції України, органи місцевого самоврядування, розподіл повноважень, реорганізації влади.

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**Problem Statement.** Decentralization reform, which involves the formation of a new administrative-territorial system, the creation of united territorial communities and the rethinking of the system of functioning of local self-government bodies, continues in Ukraine for the seventh year. The concept of decentralization reform at the first stage of its implementation justifies the need to amend the Constitution of Ukraine in terms of decentralization. Draft amendments to the Constitution of Ukraine in 2015 and 2019 were never supported by the Ukrainian Parliament, therefore, for the effective completion of the initiated reform, there is a need to adopt amendments to the Constitution of Ukraine in terms of decentralization.

**Aim.** The purpose of the work is to study the main aspects of changes to the Constitution of Ukraine in terms of decentralization of power in 2015-2019.

**Analysis of resent research and publications.** The problems of implementing the decentralization reform and changes to the main law of the country were dealt with by a number of domestic and foreign scientists, whose scientific works are directed to the study of the characteristics of constitutional law and the decentralization reform, namely: M. Baimuratov, O. Batanova, L. Bondarchuk, Yu. Ganushchak, I Drobot, V. Kuybida, V. Koltun, A. Tkachuk. However, a certain number of problems remain unsolved and require further scientific research.

By signing the Association Agreement with the European Union, Ukraine assumed important obligations to improve the national legal system, bring the legal system of Ukraine to the accepted European standards. The implementation of the agreement, the transition to the standards of European legislation actualizes the need for systemic reforms in Ukraine. In this context, the modernization of Ukrainian society and the state becomes a priority.

The strategy of Ukraine and the course towards European integration necessitate the institutionalization of power, the introduction of a modern model of public management and administration. World experience and modern social practices testify that rebooting and subsequent decentralization of power are one of the most effective mechanisms for modernization of the domestic system of public administration. Therefore, the issue of decentralization of power in Ukraine is more relevant than ever and needs an urgent solution.

Complete decentralization of power is a key factor in constitutional reform, which is simply necessary for Ukraine. Taking into account the transformational processes in the country

and the society's demand for modernization reforms, the Ukrainian authorities initiated the implementation of the constitutional reform, the most important directions of which were to become decentralization. The new stage of constitutional changes was accompanied by an active dialogue between political elites and civil society. In particular, on April 29, 2014, public hearings on constitutional construction were held in the parliament. In addition, the issue of amendments to the Basic Law was considered during the round tables of national unity in May 2014. On May 20, 2014, the Verkhovna Rada adopted the Memorandum of Understanding and Peace, by which it undertook to carry out constitutional reform, based on which the principles of decentralization will be laid down [1].

On June 26, 2014, the President of Ukraine P. Poroshenko submitted to the parliament a draft law on changes to the Constitution of Ukraine regarding the powers of state authorities and local self-government [2]. Decentralization of power is one of the priority areas of constitutional construction. This direction involves the transfer of the maximum number of powers and budget funds, which are currently at the disposal of central government bodies, to local self-government, the empowerment of those bodies that work closest to people and can solve local problems most effectively [3]. Thus, the principle of subsidiarity stipulated by the European Charter of Local Self-Government, ratified by Ukraine in 1997 [4], will be implemented.

Constitutional changes concerning the system of state administration and the administrative-territorial system are necessary for the successful development of the reform of decentralization of power.

Today, Ukraine has a motley system of territorial authorities, which inhibits the development of local communities and complicates the distribution of state administration.

Local councils do not have executive committees, which puts them in a dependent position and creates a threat of pressure from the Central Committee. Such a system is confusing and often serves not for the citizen, but against him [5].

Most European countries have already gone through the process of decentralizing functions and building an effective system for solving issues of local importance. For this, Ukraine needs constitutional changes and administrative-territorial reform.

The draft law provided for the abolition of regional and district state administrations, which were to be replaced by prefects (representatives of the president), who would carry out supervisory

functions and control the compliance of acts of local self-government bodies (hereinafter - LGUs) with the Constitution and laws of Ukraine, organize the activities of LGUs in conditions of emergency and martial law.

In the event that the prefect found a violation of the OMS Constitution and current legislation, the president's representative had the right to suspend the effect of decisions. And in the event of a violation of the KSU, the president received the right to dissolve the local government. It was envisaged to create executive committees of local government, which would be headed by the heads of local councils. The principle of subsidiarity is the main factor in the distribution of powers in the system of local government. The main powers were to be concentrated at the grassroots level (village, settlement, city).

This project met with a flurry of criticism in the mass media, so it was revised and submitted to the parliament on July 2, 2014, but, after all, it was withdrawn in November.

At the meeting of the Constitutional Commission - a special auxiliary body under the President of Ukraine, a working group was formed to develop amendments to the Constitution in the direction of administrative-territorial organization and decentralization, headed by V. Groysman.

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On July 1, 2015, P. Poroshenko submitted to the parliament for consideration a new draft law "On Amendments to the Constitution of Ukraine (Regarding Decentralization of Power)", defining it as urgent. The legislative body directed the project to the KSU, which in its decision of July 30, 2015 determined the compliance of the proposed changes with the Basic Law. The relevant draft law received approval from the Venice Commission, the European Union and the United States.

The proposed constitutional changes were developed in difficult political conditions, under the pressure of the Minsk agreements, the mistake was the failure to take into account the proposals of factions and deputy groups in the parliament, which ultimately left the project without support.

In 2014-2019, the foundations of constitutional reforms were laid, a number of public discussions were held, and a number of urgent amendments to the Basic Law were singled out, in particular,

regarding the consolidation of the decentralization of power.

Elected in the 2019 presidential elections, V. Zelenskyi in December 2019 - January 2020 twice introduced and twice withdrew the draft law on amendments to the Basic Law in terms of decentralization, which was his eighth constitutional initiative in the parliament of the ninth convocation [6]. The project was of poor quality from the point of view of legal technique and without prior public discussion, so both its revisions caused a significant public outcry [7]. The project was introduced for the first time on 13.12.2019. The Committee on the Organization of State Power, Local Self-Government, Regional Development and Urban Planning did not approve the submission of the project for consideration in the parliament, citing the fact that scientists, key stakeholders were not involved in the development of the project of changes. public.

As in the project proposed by P. Poroshenko, the post of prefect was supposed to be introduced instead of the RDA and ODA, the prefect was given the authority to control the activities of local government and the right to terminate the effect of local acts in court. The term of office of local councils was reduced from five to four years, while the term of office of the head of state and the legislative body remained unchanged - five years, in this context it is worth noting that such a provision violates the balance of equality of forms of people's power, when local bodies of self-organization of the population receive less time and resources to implement their projects than at the national level.

Another controversial aspect of the proposed project from President Zelenskyi is the loss of the special status of the cities of Kyiv and Sevastopol, according to the project, these cities are no longer considered as administrative-territorial units that have a special status. The project provided for a three-level system of administrative-territorial organization, where cities make up districts (sub-regional level), and districts, respectively, regions. This configuration, excluding the intermediate link - a city of regional importance, will lead to a disproportion of the administrative-territorial system. It was proposed to exclude from the list of powers of heads of communities presiding over meetings of local councils and heading the executive committee, which diminishes the status of the respective position.

Not having received the support of the specialized committee, the relevant project never made it to the vote. On December 27, 2019, the president registered a revised draft law taking into account some proposals, but many inconsistencies remained in the new draft.

Compared with the previous project, the cities of Kyiv and Sevastopol were included in the system of administrative and territorial organization. Zmin acquired the status of a prefect - the controversial article that he "directs and coordinates the activities of territorial bodies of central executive bodies" was removed, which made it possible to enter the post of prefect into the structure of state administration.

The revised project was not without novelties - the parliament received new powers: "premature termination of the powers of the head of the community, community council, district, regional council in cases provided for by the Constitution of Ukraine."

The concept of "region" was retained in the draft law, but the comprehensive list of regions was proposed to be deleted. It is worth emphasizing that these changes may in the future lead to federalization, become a reason for the unification of regions, or other manipulations with the administrative-territorial system. The current project provides for increasing the powers of the president, giving him the right to temporarily intervene in the activities of united territorial communities by appointing a temporary state commissioner.

As for the powers of the prefect, in addition to the powers of Article 119 of this draft, the prefect will have the right to exercise administrative supervision over the observance of the Constitution and laws of Ukraine by local self-government bodies, and the proposed changes of 2015 related to the administrative supervision of the regulatory legal acts of local authorities on compliance with the Constitution and laws, and the above-mentioned changes provide actual supervision of their activities. The proposed changes provide that the prefect will have both executive and control functions, the acquisition and combination of such functional powers is debatable.

The project of changes provides that the prefect will also perform other powers defined by the laws of Ukraine, however, such a norm is somewhat contradictory, in our opinion, the list of powers for the prefect should be clearly spelled out.

The rule regarding the ability of the Verkhovna Rada to call regular and special elections has been removed, but it is not clear who can act as the subject of their appointment in case of adoption of these changes [8].

**Conclusion.** In the proposed draft amendments to the Constitution of Ukraine in terms of decentralization, a number of fundamental changes are envisaged, which concern not only the administrative-territorial system, but also the executive power, local self-

government and the powers of the President of Ukraine, namely:

- Change in the administrative-territorial system (the territory of Ukraine is divided into oblasts, sub-regional districts and communities);
- Consolidation of the principle of the capacity of communities, which guarantees the endowment of their resources to ensure powers;
- The principle of subsidiarity is enshrined, which implies the transfer of the majority of powers to the places for their effective implementation;
- Liquidation of local state administrations;

In general, the proposed changes correspond to the set goals and provide an opportunity to settle the issues of the administrative-territorial system, local self-government, executive authorities in accordance with the Concept of Reforming Local Self-Government and Territorial Organization of Power, but their adoption in such a wording may cause many threats and problems, to avoid which it is necessary to finalize a number of provisions, namely:

- It is necessary to clearly spell out the powers and interaction between the bodies of executive power and local government according to the principle of subsidiarity;
- Return the list of regions of Ukraine to the text of the constitution;
- Write out a comprehensive list of powers for the prefect;
- Standardize the procedure of administrative supervision of the prefect;
- Oblige the prefects to be accountable to the government for the activities of the executive authorities.

The proposed change projects are an important step towards the democratization of Ukrainian society, decentralization of power in accordance with European standards.

Therefore, constitutional changes related to the reformatting of the territorial system and ensuring its compliance with the norms of the European Charter of Local Self-Government are necessary measures for the successful completion of the reform not only of decentralization, but also of other sectoral reforms.

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