PROBLEMS OF THE EXERCISE OF POWERS BY UNIFIED TERRITORIAL COMMUNITIES UNDER THE DECENTRALIZATION PROCESS IN UKRAINE

Svitlana I. Zapara
Sumy National Agrarian University, Doctor of Law, Professor, Dean of Law Faculty, Sumy National Agrarian University, Sumy, Ukraine

Oleh Rohovenko
PhD in Law, Associate Professor, Law Faculty, Chair of Administrative and Information Law, Sumy National Agrarian University, Sumy, Ukraine

Olena Tischenko
Doctor of Law, Professor, Law Faculty, Department of Labor Law and Social Security Law, Taras Shevchenko National University, Kiev, Ukraine

Maryna Kuznetsova
PhD in Law, Associate Professor, Law Faculty, Chair of Private and Social Law, Sumy National Agrarian University, Sumy, Ukraine

Natalia Bondar
Senior Lecturer Chair of State and Law Disciplines and Ukrainian Studies, Sumy National Agrarian University, Sumy, Ukraine

ABSTRACT

According to the content of the reform of the state power decentralization, the process of creating new territorial communities or actual transfer of powers and financial opportunities associated with proper self-government to such territorial communities should be gradually implemented in Ukraine. Objectively, this process is burdened by certain problems, on the solution of which the success of the reform depends. At present, a number of the draft laws intended to accelerate the pace of the reforms in Ukraine, to form the new administrative-territorial division of Ukraine, to develop the modern European model of local self-government, and as a result, to raise the living standards of citizens, have been developed, and are waiting for their adoption.

So far, a number of the draft laws intended, to some extent, to resolve these problems, have been developed. However, there are some discussions around them,
their supporters and opponents. We believe it possible to express our point of view on the research subject.

Key words: decentralization, united territorial communities, Ukraine


1. INTRODUCTION

Ukraine has made a pivot to the decentralization of power. The reform success depends on many factors, one of which is vesting the required powers in local self-governing bodies. The Orange Revolution has drawn the attention to Ukraine as the post-socialist economy in the transition to market economy [1]. The preconditions for reforming the public management system and avoiding the situation, when the state created the conditions for constant interference in local government activity, at the legislative and executive levels emerged after the Revolution of Dignity (2013-2014), when Ukraine confirmed its European development thrust. The European choice declared by Ukraine has become a prerequisite for the formation of the local self-government system on the new political and legal basis [2].

One of the important development thrusts of local self-government should be its actual rule-making ability to act on its own responsibility and in the interests of the local population. It is our profound conviction that the responsible activity of local self-governing bodies can become a reality subject to their being vested with a full authority sufficient for the performance of their functions and the implementation of the territorial community development program.

2. METHODS

The work shares the position on the feasibility of the methodological pluralism development in jurisprudence. In other words, we recognize the possibility to use different methods that will contribute to finding a common denominator, the availability of which enables to ensure the progress of scientific knowledge due to the absorption of its strengths. However, we believe that this does not exclude the prevalence of individual methods that is currently determinant in specific researches. Proceeding from the fact that the general methods (dialectic, synergetic, system) constitute the worldview foundation of all sciences, including jurisprudence, and in spite of considering the system method (approach) to be crucial in studying the phenomena of law and state, other methods, such as logical-semantic, historical-legal, comparative-legal, analysis and synthesis, statistical, and formal-legal, were used in the work when conducting the research.

The knowledge from the works of such foreign and Ukrainian scientists as W. Vandenbruwaene, K. Meberschmidt, D. Oliver, V. Vakadinova, D. Dzhunusova, I. Galiakhmetov, Ye. Hetman, T. Kuras, V. Kosovych, A. Nechyporenko, T. Riabchenko and Yu. Shpak [3-13] was used in a constructive way in this article. We believe that the authors’ study of the above problem can, to a certain extent, contribute to the deepening of the methodology of legal researches in respect of local self-governing bodies in Ukraine in terms of their reformation, and the development of the modern European model of local self-government, which, among others, is based on the Concept of the Reform of Local Self-Government and Territorial Organization of Power in Ukraine, the principles of the European
Charter of Local Self-Government and the experience of member countries of the European Union.

3. RESULTS
The first three years of the reform enable to make preliminary conclusions, generalizations, and to identify the upcoming trends that can increase the decentralization effectiveness in Ukraine. Indeed, the decentralization reform in Ukraine intends to restructure the entire system of governance, to deprive it of the Soviet administrative heritage and, on the other hand, to strengthen local self-governing bodies and provide them with the opportunity to make decisions as it shall deem fit in their own discretion and to determine personal responsibility for such decisions.

The ultimate goal of improving the local government organization should be the development of the modern European model of local self-government, the formation of the new administrative and territorial division of Ukraine. It is expected that the administrative reform implementation and the effective formation of unified territorial communities will contribute to a rise in the standard of living, the compliance with the guaranteed social standards, the creation of the conditions for providing the citizens of Ukraine with modern management (administrative) services [14]. It has been declared that the reformation of local self-government shall be implemented with the consideration of the achievements of the modern European public management model, in particular, good governance, and the achievements of the information society.

The first significant step towards the decentralization reform implementation in Ukraine was the Concept of the Reform of Local Self-Government and Territorial Organization of Power in Ukraine [15], which was approved by the Cabinet of Ministers of Ukraine (hereinafter referred to as the CMU) on April 01, 2014, and provided for the decentralization, namely “the delegation of part of the central government functions to local self-governing bodies”, the creation of the appropriate material (any property, including land, owned by territorial communities), financial (any taxes and fees related to the Anti-Terrorist Operation Zone) and organizational conditions to ensure the exercise of their own and delegated powers and authority by local self-government bodies. According to the Concept of the Reform of Local Self-Government and Territorial Organization of Power in Ukraine [16], the reform of local self-government and territorial organization of power provides for 5 steps and includes the following actions: the definition of the territorial basis of local self-government bodies (LSB) and bodies of executive power (BEP); the separation of powers between LSB of different levels; the separation of powers between LSB and BEP; the determination of the required amount of resources for each level of government authorities; the establishment of LSB’s responsibility to a voter and the state.

The reform implementation has been commenced on the basis of the Concept of the Reform of Local Self-Government and Territorial Organization of Power, the Coalition Agreement, the Government Activity Program, the “Strategy 2020” of the President of Ukraine and the appropriate plan for their implementation. The Laws of Ukraine “On Cooperation of Territorial Communities” (2014) [17] and “On a Voluntary Association of Territorial Communities” (2015) [18], setting the next stage of the local self-government reform in Ukraine, were adopted in 2014-2015. The amendments to the Constitution of Ukraine with respect to the local self-government reform have been drafted. The significant advantages and achievements of the Law of Ukraine “On a Voluntary Association of Territorial Communities” include the fact that the unified territorial community (UTC) establishes the direct intergovernmental fiscal relations in case of its recognition as a well-situated or prosperous community, and directs the funds obtained to the community’s needs.
The regulatory acts adopted have enabled the territorial communities to develop the long-term plans of the formation of well-situated territorial communities and to begin the process of consolidation. In 2015, local elections were held in 159 united territorial communities that enabled the UTCs to start their activities on the basis of new powers and to move to another format of intergovernmental relations in 2016. As of July 21, 2017, Ukraine has created 413 UTCs, and if it is remembered that the documents for holding local elections in 146 communities have been submitted to the Central Elections Commission, then, in general, 559 UTCs were created in Ukraine for the period 2015-2017. These formations include 2647 former local councils located on the area of 102 094 km². This is the area that exceeds the territory of such countries as Hungary or Portugal.

![UTC Graph]

**Figure 1 UTC**

In addition, it should be noted that in 2020, the Ministry of Community and Territory Development submitted for approval a draft resolution of the Verkhovna Rada of Ukraine regarding future districts in Ukraine. Today, in Ukraine there are 490 districts, the population of the smallest of which, Polisskyi district, (Kyiv region) is estimated at 5,622 people (as of January 01, 2019), the population of the largest of which, Kharkiv district, is estimated at 182,100 people (as of February 1, 2016). Based on the “Methodological Recommendations on the Criteria for the Formation of Administrative-territorial Units of the Subregional (District) Level”, the lowest limit of population in the future district is estimated at 150 thousand inhabitants. This criterion is, in turn, based on the “Nomenclature of Territorial Units NUTS-3” of the European Union.

For example, today there are 18 districts in Sumy region. According to the reform, their number is planned to be reduced to five.
At present, as a result of the reform, according to the conducted statistical survey [14], the UTCs have received the opportunity to solve the development problems (94%), to strengthen the relationship of government authorities with the community’s population (93%), to participate in the regional development projects (91%), to adopt and implement decisions in a prompt manner (90%).
Problems of the Exercise of Powers by Unified Territorial Communities Under the Decentralization Process in Ukraine

![Figure 3](image)

**Figure 3** New opportunities for UTCs

The beneficial outcomes from the reform are demonstrated in such areas as: the exchange of experience with other communities (99%); the improvement of public areas, landscaping, street lighting (82%), the operation of the institutions of socio-cultural sphere (76%), the operation of schools (74%). Some positive changes have occurred in the sphere of healthcare (37%); law and order in community (33%); transport connection between settlements (22%), public transport (18%).

According to the results of the above statistical study, the association of the communities has identified the problems leading to some negative outcomes of the decentralization: first of all, it is the inability to dispose of land outside settlements (95%), the imperfect regulatory legal framework (75%) and lack of the community’s management skills (46%).

![Figure 4](image)

**Figure 4** The problems leading to some negative outcomes of the decentralization

The above statistical data, on the one hand, indicate the provision of territorial communities with additional powers, including in the sphere of rule-making, and, on the other hand, testify to the necessity of improving the regulatory legal framework, which regulates the
UTC activities, and will strengthen the UTC position in relation to the community’s governance.

The world practice shows that the municipal power conducts rule-making in three cases: when the state legal regulation of territorial issues is missing. This refers to both the competency issues (for example, the issues on the local taxation of population, licensing, and some issues on charity activities) and the issues of self-organization and activity (the formation of its own administrative apparatus, the establishment of permanent or temporary committees, the adoption of regulations and rules); on the issues which are regulated by the rules of law in the most general terms, and require the local legal specialization, in particular, when the principles and general principles are enshrined, or the legal enshrinement of the total guarantees of municipal activities (e.g. fixing the interest rate of property tax, providing details in the issue on the compulsory expropriation of land plots on different legal grounds and for different purposes, implementing the legislative rules on the issues of content of recreational areas and other leisure areas) are outlined in the legislation; when the legislation fails to cover all the variety of local particularities (the legal regulation of the activities of municipal bodies is often performed through the enshrinement of their functions as positive obligations in the legislation, therefore, the rule-making of local self-governing bodies is inevitable and, sometimes, simply provided for by the legislation. The specifics of the Ukrainian rule-making process is that local self-governing bodies, unlike their analogues in most European countries, have insufficient authority to implement the appropriate, effective governance.

The standardization and regulatory nature of the acts of local self-government are conditioned primarily by the fact that the municipal power that generates rules in its socio-legal nature is public authority, as its institutionalism is based on the free will of the population. Since the effective governance is implemented due to the proper distribution of powers between central and local authorities, the success of the decentralization process, in our opinion, is associated with the development and adoption of relevant regulatory legal acts related to the harmonious and balanced distribution of powers, the provision of local self-governing bodies with the required powers and authority.

Unfortunately, a number of issues, however, remain unresolved despite the undoubted tendencies towards the decentralization reform in Ukraine. The reform on the state power decentralization has revealed the significant problems in its implementation, among which the following should be mentioned:

- passive resistance of the regional public administration, the heads and deputies of regional councils, losing their powers, to the decentralization;
- it is not infrequent that in connection with the UTC formation, several territorial communities, which have not decided on uniting with other territorial communities, remain in the regions, on the territory of which the UTCs are established. Therefore, the structures, which provide social services for such territorial communities, still exist in the executive body of the district council – the regional public administration. In this case, the load on the employees of such structures is very low. Thus, there is a misallocation of human and financial resources that causes a social tension here and there, and creates the overlap of responsibilities;
- UTCs create their own executive structures to exercise the powers determined by law. The practice of the law implementation indicates the shortage of qualified personnel for the exercise of these powers at an adequate level. The service is insufficiently prestigious and properly paid;
the problems in the field of spatial planning (urban planning documentation), particularly, the establishment of the procedure for developing the plans of the unified territorial communities, the improvement in the quality of the spatial planning documentation (urban planning documentation) development, the holding of public hearings to respect the public interest and to relieve tension at the project planning and construction. At present, it is not possible to determine the composition and content of the General Scheme of Territorial Planning of Ukraine in the current legislation, as the Law of Ukraine “On the General Scheme of Territorial Planning of Ukraine” determines that the procedure for the development, composition and content is enshrined in the regulatory acts, which indicate that the composition and content shall be contained in law. In its turn, the Law of Ukraine “On Regulation of Urban Planning” gives only the reference to the Law of Ukraine “On the General Scheme of Territorial Planning of Ukraine”. Thus, except for the definition, the legislation does not provide for the clarification and legislative regulation of the General Scheme of Ukraine. In addition, there are a number of inconsistencies in the harmonization of historical and architectural basic plans and the approval of the general plans of settlements, resulting in the impossibility to preserve cultural heritage monuments. The ambiguity of the interpretation of certain provisions of the Law of Ukraine “On Regulation of Urban Planning” enables local self-governing bodies to develop and approve the detailed plans of territories contrary to the general plans of settlements that further leads to any legal disputes during the construction of individual projects. Moreover, an urgent need is the resolution of the issue on the development of the spatial planning documentation for the unified territorial communities with the aim of establishing the borders of the territories of the unified territorial communities and the allocation of land plots for urban planning needs;

- the limitation of the powers of local self-government bodies in the sphere of land relations in part of the right of the village, town and city councils and UTCs to dispose of the state-owned lands outside settlements as the delegated powers, to change the purpose of private land plots not only within settlements but also outside them. According to the respondents participating in the survey related to the decentralization in Ukraine, the biggest problems, that lead to negative outcomes, include the inability to dispose of land outside settlements;

- the need to improve the provision of medical services to the population living in rural areas, an increase in the efficiency and effectiveness of the use of funds allocated to the healthcare development in rural areas, bringing to the compliance of a network of the healthcare institutions in rural areas, and their technical, financial and administrative support that would meet the needs of the population.

- the existence of unequal conditions for training and development of rural and urban children. Secondary education in rural areas suffers from the inadequate material and technical base, the problems with the up-to-date information support for the educational process; a reduction in the level of training of human resources and the low socio-economic protection of rural teachers. The issues, associated with the transportation of pupils to schools and their provision with textbooks, are not solved at an adequate level.

4. DISCUSSION
So far, a number of the draft laws intended, to some extent, to resolve these problems, have been developed. However, there are some discussions around them, their supporters and
opponents. We believe it possible to express our point of view on the research subject. Thus, among the ways of improving the existing situation, in our view, the following should be mentioned:

- The creation of legal preconditions for increasing prestige of the service in local self-government bodies and avoiding corruption during the service, providing appropriate specialists with an access to the service. At present, the executive bodies of individual UTCs include the individuals who lack any professional experience. The conditions for their professional self-improvement, career growth should be created for such persons subject to their proper motivation and compliance with the terms of virtue. The development and implementation of the regulatory framework of not only the requirements for an employee of local self-government body, but also a transparent mechanism of admission to the service, along with the corresponding social and financial protection of such employees, should be further carried out. It’s no coincidence that 46% of the respondents, interviewed about the UTC effective activities, have noted that among the significant drawbacks of the functioning of the newly created associations, pride of place goes to the lack of the community’s management skills. The development of legal framework for the service in local self-government bodies shall be consistent with the European principles of public administration.

- The provision of the possibility to establish the direct inter-budget relations not only, exclusively, subject to uniting all territorial communities provided for by the Long-Term Plan (as stipulated by the Law of Ukraine “On a Voluntary Association of Territorial Communities”), but which by their infrastructural, material and financial parameters are capable of fulfilling a number of the social programs provided for the districts and cities of regional significance. The introduction of such rule at the beginning of the reform has been, to some extent, justified by a stimulating step towards the consolidation of communities. But currently, the opportunities to establish the direct inter-budget relations will create the conditions for the development of the powerful, independent and self-sufficient territorial communities, which could regulate and manage a substantial part of the public affairs within their competence, in the interests of the local population, leading to increased confidence in the reform and the improvement of the final result.

- The extention of the procedure for accession of other territorial communities to the prosperous unified territorial communities without holding the first election to the city council to the territorial communities of the cities of regional significance. For this purpose it is proposed to equate the territorial communities of the cities of regional significance with the prosperous unified territorial communities. Indeed, the consolidation of the territorial communities of the cities of regional significance with other territorial communities is not carried out due to the objective unwillingness of the mayors and city councils of the cities of regional significance, predominantly representing large or very large territorial communities, to participate in new local elections for the consolidation with small rural and township territorial communities. The territorial communities of the cities of regional significance in all cases are prosperous territorial communities and the basis for the formation of new territorial communities. Thus, their being equated to the prosperous unified territorial communities is justified. The specified step could become a new strong impetus to the decentralization of public authority and the creation of new large territorial communities.
• The improvement of the regulatory framework associated with the field of spatial planning (urban planning documentation), the establishment of the procedure for developing plans for the united territorial communities. The initiative on the amendments to the Law of Ukraine “On Regulation of Urban Planning” [19] should be supported and accelerated in order to resolve the issues on the planning and development of territories; to standardize the issues related to the regulation of relations in the development and approval of the spatial planning documentation; to provide the unified territorial communities with the single spatial planning documentation; to enlarge the powers vested in local self-government bodies to regulate the development through the adoption of the rules for the territory development regulation; to ensure the actual connection of the socio-economic development programs with the spatial planning documentation; to create a transparent and non-contentious mechanism of meeting public interests in the development and approval of the spatial planning documentation.

• Since the limitation on the UTC powers to dispose of the state-owned land outside settlements as the delegated authority, to change the intended use of private land plots not only within settlements but outside them, causes a categorical criticism from the representatives of local self-government bodies, this issue cannot be ignored. Local self-government bodies represent the interests of the community, which the state should consider.

5. CONCLUSION
According to the content of the reform of the state power decentralization, the process of creating new territorial communities or actual transfer of powers and financial opportunities associated with proper self-government to such territorial communities should be gradually implemented in Ukraine. Objectively, this process is burdened by certain problems, on the solution of which the success of the reform depends. At present, a number of the draft laws intended to accelerate the pace of the reforms in Ukraine, to form the new administrative-territorial division of Ukraine, to develop the modern European model of local self-government, and as a result, to raise the living standards of citizens, have been developed, and are waiting for their adoption.

REFERENCES


