

SPECIFICS OF DECENTRALIZATION REFORM IN POLAND AND UKRAINE

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Abstract

The article identifies features of decentralization reforms in Ukraine and Poland. Starting conditions of the preparedness of Polish and Ukrainian society on the verge of reform have been studied. The Ukrainian-Polish relations in the process of implementation of the reform in Ukraine have been investigated. Namely the expert environment responsible for the implementation of the Polish decentralization model has been identified. The common features of decentralization reform for Ukraine and Poland are identified which are in the same three-tier system (oblast - voivodeship, rayon – povit, hromada – gmina). The basis for decentralization reform in Poland was gmina, as a basic unit that includes one or more settlements, and the territorial basis for realization of local self-government by residents of settlements. For Ukraine, such units are united territorial communities, which creation have not yet been completed.

Key words: *Democratization, Decentralization, Transit, Administrative Structure, Hromada.*

INTRODUCTION

The decentralization reform that started in Ukraine in 2014 had taken Polish practice as the basis. The Polish and Ukrainian models of decentralization and reform process have different starting political conditions and readiness level of the society. The effective implementation of the reform was slowed down by the lack of compatibility of the Polish decentralization model with Ukrainian realities and the inability to implement key institutional changes quickly. Following the first results of decentralization in Ukraine in 2015-2019 and the perspective for 2020 we can take up the position that the reform is the European integration –oriented and is implemented in accordance with European standards. In its turn, the Polish experience determines that the 1991-1999 decentralization reform was important, but not main in achieving the European integration progress.

1. OVERVIEW OF SOURCES

Legal framework of the Polish decentralization reform are based on the Constitution of the Republic of Poland 1997 [Konstytucja 1997]; Law dated 8 March 1990 “On Local Self-Government of gmina” [Zakon 1990]; Law “On Local Self-Government of the County” of June 5, 1998 [Zakon 1998]; Law “On Local Self-Government of the Voivodeship” of 5 June, 1998 [Zakon 1998]; Law “On the Direct Election of the Village Mayor, the Mayor of the District Council, the Mayor of the city of June 20, 2002 [Zakon 2002]”.

With the adoption of the Constitution of Ukraine, constitutional status was granted to local self-government. It should be noted that in the Constitution of Ukraine (1996), decentralization is associated not with the state executive branch of power, but with the state power in general and territorial aspect of its implementation (Articles 1, 2, 5, 7, 132) [Konstytucja 1996]. Thus, on May 21, 1997, the Law of Ukraine “On Local Self-Government of Ukraine” was adopted by the Verkhovna Rada [Zakon 1997]. The

next important step was the adoption of the Law of Ukraine “On Local State Administrations” dated 9 April 1999 [Zakon 1999]. The first stage of decentralization started with the Decree of the Cabinet of Ministers of Ukraine “On approval of the Concept of reforming local self-government and territorial organization of power in Ukraine” dated 1 April 2014 [Rozporiadzhennia 2014]. Adoption by the Verkhovna Rada of Ukraine on August 31, 2015 of the Resolution “On preliminary approval of the bill amending the Constitution of Ukraine on decentralization of power” [Postanova 2015] was another important step.

2. STRUCTURE

The reform of Polish society was made possible by the transformation changes in the Republic of Poland that occurred during the “third wave” of democratization. In the process of transition from a socialist society to a democratic one, Poland underwent institutional changes, which reflected democratic transition.

Category of “democratic transition” was first introduced into scientific discourse by American political scientist D. A. Rustow (“TraCSOs to Democracy - Toward a Dynamic Model”). Democratic transition is one of the types of systemic transformation of a society which main purpose is to change the old institutional order and build new democratic institutions. There are following democratic transition theories among the most popular ones: liberal, according to which civil society institutions play the most active role in transformation processes, and state – centered (conservative), where the leading role belongs to the state [Rastou1995: 5].

Poland is characterized by a liberal type of democratic transition, following the American model, which is accompanied by the dominance of political freedoms and civil rights. The principle of checks and balances, the absence of an official ideology, an active civil society and constitutional changes are relevant for such a model.

With a liberal form of democratic transition, civil society is able to resolve conflicts and control citizens’ behavior without resorting to mechanisms of public coercion. This form of democratic transition has been characteristic of Poland throughout the path of European integration: from the time of establishing diplomatic relations with Europe in 1989 to 2004, which became the year of full membership.

In the early 1990s, diplomats of the Republic of Poland embarked on a rapprochement with the European Economic Community. The main tenets of change were the demands of improving economic development, the standard of living and the place of Poland on the world stage. After 1989, European politics became a priority of Poland’s foreign policy. This focus was not exclusively in the EEC: the main aim of the Polish political elite was to establish contacts with Western European organizations as soon as possible and to finally abandon the communist past.

Political preconditions for Poland’s accession to the European Union track back to the days of the activity of the independent trade union organization, Solidarity. American political scientist, sociologist, and statesman Zbigniew Brzezinski emphasized

that Solidarity's activities were an exceptional phenomenon in the history of the twentieth century, which triggered the decline of communism, the internal crisis in the USSR, and the collapse of the communist system in Poland. British historian Norman Davies, who says that the emergence of Solidarity relates with the time when Poland played a major role in the communist world [Brzezinski 1998], shares his view. The government and Solidarity agreed on political and economic changes that led Poland to move towards democracy and a market economy. A transitional National Assembly (the Seimas and the Senate) was also formed, triggering reforms. New government started democratic transformation and changes in socio-political system. In the first instance, everything related to "socialism" was abolished, and conditions were created for Poland to become a Western type parliamentary state. One of the main reforms of the democratization process in Poland was decentralization.

Decentralization is the process of redistributing or dispersing the functions, authorities, people or things of central government, including both political and administrative sides. There are several levels of decentralization: political, administrative, financial, fiscal, economic. It is worth mentioning that decentralization serves as a method of governance aimed at developing territories and local democracy. In the context of decentralization, the following methods are used: financial deregulation aimed at forming financial autonomy of a certain territory; the method of delegation of authority used to delegate powers of state authorities to local authorities; the method of deconcentration, which means the distribution of performance of functions of the state within the system of executive power. That means, deconcentration involves the transfer of the power of decisions to bodies that are not subordinate to the central authorities.

The changes that began in 1989 started with political and administrative decentralization and went through two stages. In the first stage, the changes resulted from the reform of the political system, which led to disappearance of the monopoly role of one political party. In the early 1990s, Professor Jerzy Regulski, the Commissioner of the Government for the Implementation of Self-Government Reform, described the ideology of the reform in this way: "The function of the state is not to manage, but to create stable and secure frameworks for the activity of individuals, businesses or social groups. Because development is not the result of the state activity, but the sum of the results of the activity of individuals or organizations. The state can simplify or complicate this development... The state is obliged to do only what it is obliged to do... The state should be decentralized according to the principle of "assistance". [Fund 2003].

The basic principle of decentralization proclaims Part 1 of Art. 15 of the Constitution of the Republic of Poland (1997): "The territorial structure of Poland guarantees the decentralization of public power. Self-government is not hierarchical. Self-government structures must be complementary, not overlapping. Neither the county nor the provincial self-government supervises the district self-government." [Constitution

1997].

As a result of the reform, 2478 gminas (the basic units of territorial self-government at the local level) were created in Poland. At the middle regional level, there were 373 poviats (including 65 poviats that have the status of designated cities - poviats cities). At the regional level, 16 voivodships were formed after the reform (49 before). The key element in this process was the Law of the Republic of Poland "On the Self-Government of the Voivodeship" dated 5 June 1998 [Ustawa 1998]. According to the European Union classification, it corresponds to the NUTS-2 regions. The newly formed voivodships shaped a regional community of self-government within respective territories. After the reform, the average Polish voivodship numbered approximately 2.4 million inhabitants and occupied an area of approximately 19.5 thousand km². [Shchersh 2006: 138].

Administrative decentralization in Poland facilitated the development of local self-government, improved the quality of life of its citizens and, after the accession of the state to the EU, enabled newly created administrative-territorial units to become equal partners in international cooperation. The contractual system of relations between the regions and the central government was institutionalized in 2000 because of the Law "On Principles of Supporting Regional Development", after ten years of new territorial development [Kaminska 2014].

The decentralization reform in Poland was a consistent continuance of the process of society democratization and made the institutional way in the context of the implementation of the Association Agreement with the European Union. Instead, in Ukraine, the decentralization reform started due to the need to fulfill the conditions for European integration. In Ukraine, the decentralization process began in 2014 with the adoption of the Concept of Local self-government reform and territorial organization of government, Law "On Cooperation of Territorial Communities [Zakon 2014], "On Voluntary Association of Territorial Communities" [Zakon 2019]. This process allowed to form a substantial effective and capable local self-government institution at the grassroots level – Amalgamated territorial communities (ATC) – in accordance with the provisions of the European Charter of Local Self-Government.

The common feature of decentralization reform for Ukraine and Poland is an identical three-tier system: oblast - voivodship, rayon – poviat, hromada – gmina. The basic unit is the gmina, which includes one or more settlements. It is the territorial keystone for the implementation of local self-government by residents of settlements located on the territory of the community and the formation and activity of local self-government bodies.

Ukraine, like Poland, applies the basic principles of decentralization defined by the European Charter of Local Self-Government. Following principles can be considered the most important of the European Charter (fundamental to the formation of a European model of government at subnational territorial levels):

- Recognition of the principle of local self-government in domestic legislation, and

in the constitution, if applicable (Article 2).

- The realities of local self-government, reflected in emphasizing the substantial (and not any arbitrarily determined state) scope of public affairs, regulation and management which are empowered to exercise local self-government (Article 3).
- The responsibility of local self-government, as the capacity of the relevant authorities to regulate and manage local affairs - is only within the limits of state legislation (Article 3).
- Defining the nature of local self-government as a public authority acting on the one hand, of the local population (territorial community) (Article 3) and, on the other, is derived from sovereign state power, since the main powers and functions of local self-government are determined by the Constitution or by law (Part 1, Article 4).

The system of local governance of Ukraine and Poland defines local self-government as a subject of public authority, establishes a balance between centralization and decentralization in the state governance system, consolidates the existence of a management model based on two subsystems: local self-government, which is based on the functioning of the principle of decentralization and a government administration that operates on a centralized basis. The key difference between the local government system in Ukraine and Poland is the presence of a state administration (prefect institute) in Ukraine at the “oblast” and “rayon” levels. While in Poland there is no state administration at the “povit” level, but only at the voivodeship level the voivode institute functions.

Poland’s advantage in carrying out decentralization was that administrative-territorial reform and local self-government at the basic level (gmina) were separated in time (1970 and 1990). Gmina’s main task was to meet the most important human needs. Appropriate infrastructure was created for this purpose and budget reform was implemented. When establishing an administrative structure in Poland, formation of a basic territorial level of government at the gmina level was ensured foremost.

In accordance with the Law “On the Self-Government of the Voivodeship” dated 5 June 1998, the next stage of reform took place on January 1, 1999 [Ustava 1998]. In addition to local governments, gmina, povits and voivodships appeared. The main purpose of bringing in such a structure was to avoid overlapping of powers between government and self-government bodies. This division provided equal access for all residents to special public services, guaranteed the possibility of an effective regional development policy and using the EU regional policy instruments.

The povit is the second level of local government. Unlike Gmina, it performs the public tasks assigned by law. The povit, like gmina, is a legal entity, and its independence is subject to judicial protection. Tasks and functions of the povit are complementary to the functions of the gmina. In contradistinction to, the povit does what the gmina cannot perform.

The voivodship is responsible for conducting regional policy and creating a compre-

hensive regional development strategy. This policy consists of providing conditions for economic development, building social and technical infrastructure, finding and combining public and private funds, supporting education and science, ensuring cooperation between science and industry, protecting environment and cultural heritage.

The situation is more complicated in Ukraine, where reform of administrative-territorial and local self-government started at the same time. In addition, the administrative-territorial reform at gmina level was compulsory in Poland, and in Ukraine until January 1, 2020, the process of embodiment of territorial communities is based on the principle of voluntariness.

The characteristic results of the reform implementation in Ukraine are determined by the constant number of oblasts, fragmentation of territorial communities, especially at the lowest level of government - small towns, townships and villages. The oblasts and rayons in Ukraine have administrative structure similar to the Polish voivodships and povits, characterized by the dualism of the authorities at these levels. On the one hand, there are the representative bodies of regional and district councils, which are elected by the population of the respective administrative and territorial units. On the other hand, the executive authority, which in accordance with Art. 118 of The Constitution of Ukraine are implemented by local state administrations in oblasts and rayons, cities of Kyiv and Sevastopol. In accordance with the current Constitution, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Local State Administrations" dated 9 April 1999 [Zakon 1999].

In Poland, where the decentralization reform had been successfully implemented, the presence of a consolidated "reform headquarters" of representatives of parliament, government, experts and non-governmental organizations played a significant role. One of these institutions was the Government and the Government Office for Local Self-Government Reform, headed by Jerzy Regulsky, the Reform Commissioner. At the same time: "Government" subordinated directly to the Prime Minister, "Management" - to the structure of government. In-parallel to the Senate was the Committee on Local Self-Government. The Local Democracy Development Fund operated in the public space [Krat, Sofiy 2017: 16].

There are large number of reform-management centers, which are poorly coordinated and are lacking level of reform management at the regional level. In Ukraine, the President of Ukraine has the following coordination and advisory centers in his capacity: The International Advisory Council (replacing The International Reform Advisory Council), The National Reform Council (NRC), The Executive Reform Committee, The Project Office. The Verkhovna Rada, in the context of decentralization, he coordinates The Committee on State Building, Regional Policy and Local Self-Government, The Advisory Council on Local Self-Government; forms an expert group on legislative support for decentralization of power and reform of local self-government, The Parliamentary Office of Local Self-Government. The Cabinet of Ministers also has its own

sphere of influence on reform. It creates a group of strategic advisers to support reforms in Ukraine and provides the activity of the reform implementation office under the Prime Minister of Ukraine. Special committees and reform offices are under the Ministry of Regional Development (Ministry of Community and Territory Development), the Ministry of Finance, the Ministry of Economic Development, the Ministry of Infrastructure, the Ministry of Ministry of Agrarian Policy, the National Agency of Ukraine for Civil Service.

Existence of many centers responsible for implementation of the reform in Ukraine is explained by the fact that in the autumn of 2016 a large financial support of the European Bank for Reconstruction and Development amounting to EUR 8 million was provided. Initially, there were four ministries (The Ministry of Finance, The Ministry of Economy, The Ministry of Infrastructure and The Ministry of Ministry of Agrarian Policy) receiving financial aid.

Another significant difference between the implementation of the reform in Ukraine and Poland is that in addition to these management centers, there are serious players in Ukraine, the so-called “centers of influence”, which have significant regional support, financial support for international technical assistance projects and their own vision of decentralization issues and poorly coordinated activity. The following can be examples of centers of influence: The All-Ukrainian Association of Local Self-Government Bodies, The Association of Cities of Ukraine, The Ukrainian Association of District and Regional Councils, The All-Ukrainian Association of Rural and Settlement Councils. The hierarchical decentralization in Ukraine is also accompanied by the regional level, where the responsibility for implementing the reform rests with the deputy heads of regional state administrations. On June 4, 2016, the Cabinet of Ministers of Ukraine adopted the Resolution “Some Issues of Activities of Oblasts, Kyiv City State Administrations” developed by the Ministry of Communities and Territories of Ukraine. It provides for the introducing additional position of the deputy head of local state administration for implementation of local self-government reforms. [Rozporiadzhennia 2014]. According to this document, public administrations within the budget had to resolve the issue of introducing the post of deputy head of the respective local state administration, who would be entrusted with the authority to implement local government reforms. As of 2019, in the oblasts this issue is resolved in different ways, in some - this position was introduced, in others - the issue of decentralization was overseen by the first deputy head of the regional state administration. The regional reform offices, which were founded in April 2015 according to a memorandum between the Ministry of Regional Development of Ukraine and the All-Ukrainian Association of Local Self-Government Bodies “Association of Ukrainian Cities” within the Dialogue project, are managing and coordinating the reform process in Ukraine at the regional level.

From 2016, the reform offices activity continued to 2020 under the U-LEAD with Europe Program: Local Empowerment, Accountability and Development [U-LEAD 2016].

In 2016, the reform offices were reformatted into separate units of the Center for Local Self-Government Development, created on the basis of a Memorandum between the Ministry of Regional Development, the Ukrainian Association of District and Regional Councils, the All-Ukrainian Association of Village and Settlement Councils and the GIZ project.

However, our borrowing from the Polish experience is not the only contribution of Poland to the development of Ukrainian decentralization. Poland became one of the first countries, which arbitrated Ukraine's European integration aspirations on the international stage in 2014:

On March 31, 2014, the first Polish experts arrived in Ukraine to assist in the implementation of local self-government reform:

Marcin Świącicki – the Head of the Polish expert advisers group on self-government reform and decentralization in Ukraine, deputy of The Sejm, former mayor of Warsaw.
Wojciech Misiąg – professor, Advisor to the Head of the Supreme Chamber of Control of the Republic of Poland, Deputy Minister of Finance on Self-Government Finance in Leszek Balcerowicz's Government.

Andrzej Porawski – director of the Bureau of the Association of Polish Cities.

Grzegorz Kubalski – expert of the Association of Polish Counties.

Markian Zheliak – coordinator of the Polish-Ukrainian decentralization reform task group.

Signing of the Memorandum of Cooperation in Support of Local Self-Government Reform in the framework of the State visit of the President of Ukraine to the Republic of Poland in Warsaw on 7 December 2014 can be considered as a significant event. For the purpose of implementation of this cooperation, The Advisory Group on Local Self-Government Reform in Ukraine was formed under the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine (now the Ministry of Communities and Territories), which included Polish and Ukrainian experts in the field of constitutional law and local government [Krat, Sofiy 2017: 4].

The next step was the initiative of the Visegrad Group leaders (V-4 at late 2014) to provide technical and advisory assistance to Ukraine in political, macroeconomic and sectoral reforms. V-4 has divided the areas of assistance for Ukraine: Poland supports Ukraine in the field of decentralization and reform of authority at the regional level, as well as in the sphere of administration and civil service; Slovakia assists in energy and energy security; Czech Republic aids Ukraine in the field of civil society reform, education, as well as the media; Hungary supports in the field of economic development of the country, small and medium entrepreneurship, as well as the implementation of the foreign trade agreement.

Polish experts emphasize that Ukraine can find difficulties not inherent in Poland, since there are already three levels of self-government until the reform implementation. Problems arise at the stage of distribution of funds between the three levels of local government. "In Poland, 75% of all decentralized funds are spent by communi-

ties and only 25% by povits and voivodships. This became possible, because the first stage of reform in Poland was in comfortable terms, factually “from scratch,” – mentioned by Andrzej Porawski [Decentralization 2014].

The decentralization reform in Ukraine has significant results at the present stage of implementation. At the beginning of 2019, 876 ATCs were created. However, the election of the ATG governing bodies, which is a prerequisite for starting the ATC functioning, was held in only 806 ATC. The rest were awaiting the 2019 elections (including 45 ATCs in which the 2018 elections did not take place due to imposing of martial law in its respective locations). In general, according to the approved long-term plans, 1,289 ATCs should be created. More than 3,700 base-level territorial communities (cities, villages, settlements), or 33.9% of all territorial communities in the country (excluding occupied territories) have joined to functioning amalgamated territorial communities. Most of the ATCs function in the Dnipropetrovsk (62), Cherkasy (54) and Zhytomyr (53) oblasts. The smallest number of ATS is in the Transcarpathian oblast (6), which is also an outsider in other indicators of the formation of an ATC (due to the long absence of an approved plan for the creation of an ATC) [Decentralization 2019].

It should be mentioned that decentralization in Ukraine has a tendency to fall behind the schedule of ATC creating. In turn, Polish experts claim that this process will accelerate after 2020, when the principle of voluntarism will cease.

CONCLUSIONS

The decentralization reforms in Poland and Ukraine have different starting conditions and implementation mechanisms. Poland, in the context of carrying out its reforms, took as its basis the French model of decentralization, and Ukraine, in turn, borrowed a Polish model that is not fully inherent in the Ukrainian system.

In contradistinction to Poland two reforms started at the same time in the beginning: administrative and territorial system reform at the basic level (amalgamation of communities) and reform of local self-government (redistribution of powers and resources for the benefit of the amalgamated communities). The reform process in Ukraine has some complexity, as administrative structure reform at the level of the ATC is based on the principle of voluntariness, which is the basis of the Law “On Voluntary Association of Territorial Communities”. The process of forming ATC is slow. However, initially, both in Poland and in Ukraine, decentralization reform was strongly influenced by political forces, which delayed the reform in Poland for four years. In Ukraine it leads to delaying the reform of the administrative and territorial system, which in turn, slows down local self-government reform because of the presence of many decision-making centers.

The year 2020 is expected to be a key year in the formation of a basic level of local self-government (as to the date of completing this study). As of October 2019, 887 ATCs were created, however, the decentralization reform is ongoing and running be-

hind the government schedule. However, there is already a critical mass of citizens who have seen the benefits of creating an ATC and the new authorities desire to quickly complete the reform is traced. Therefore, Ukraine is at a new stage of reform, when both the lower and the upper parts are mostly ready to move from the principle of voluntariness to full amalgamation of communities all over Ukraine at the same time. Therefore, decentralization reform in Ukraine tends to completion and holding new 2020 local elections in the new ATCs.

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