

## INNOVATION, WORK, SOCIETY

FOREIGN EXPERIENCE OF ENSURING THE ACTIVITIES  
OF LOCAL SELF-GOVERNMENT BODIES UNDER CONDITIONS  
OF DECENTRALIZATION IN POLAND**Andriy Basko**

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**Summary**

The purpose of the research within the scope of the scientific article is to clarify the essence of the model of building a system of local self-government in the Republic of Poland, taking into account the principles of decentralization in view of the use of certain forms of its implementation in Ukraine. To achieve the goal of the research, the following tasks were carried out: clarification of the prerequisites, forms and methods of building a model of the local self-government system in the Republic of Poland, taking into account the observance of the principles of decentralization; carrying out a comparative analysis of the construction of this model in Poland and Ukraine; identifying effective forms of implementation of the principles of decentralization of the model of local self-government in Poland and forecasting the possibility of their implementation in the process of local self-government reform in Ukraine.

As a result of the study, it was established that the Polish system of local self-government is characterized by the presence of such a specific mechanism of delegation of power, such as their transfer between local self-government bodies of different levels. Within the framework of this mechanism, the powers of the self-governing bodies of the voivodship can be delegated to the relevant district bodies if necessary. It has been proven that this type of delegation of powers is a completely natural continuation of the principle of subsidiarity, as it is applied in the case when a certain administrative authority is legally assigned to a local self-government body of one level, but can be most effectively implemented by a local self-government body of another level - both higher and lower Ukrainian legislation does not allow such delegation of powers between local self-government bodies of different levels at all. That is why one of the measures of the decentralization reform in Ukraine should be the enshrining in the Law "On Local Self-Government in Ukraine" or in the prospective Municipal Code of Ukraine the provision that local self-government bodies can enter into administrative agreements with each other on the delegation of power and the transfer of necessary for them implementation of financial and (or) material and technical resources.

**Key words:** local self-government bodies, reforming local self-government bodies, decentralization, Polish experience, implementation of Polish experience in reforming the local self-government system.

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## 1. Introduction

In recent years, Poland has traditionally acted as a lawyer for Ukraine in the European community and a kind of locomotive of the European integration aspirations of our country, at the level of political, public and scientific communications, it actively offers to use its experience in the modernization and democratization of the state, legal and socio-economic system, in particular in relation to the reform of the system of local municipality. The Polish model of local self-government reform, together with the German and French models, is a certain reference point for the reform of the local self-government system in Ukraine, because being close territorially and to some extent mentally, it has made significant progress, being similar in view of the closeness of the model of territorial organization of Poland and Ukraine.

In this regard, below to achieve *the goal of the research* - to clarify the essence of the model of building a system of local self-government in the Republic of Poland, taking into account the principles of decentralization in view of the use of individual forms of its implementation in Ukraine. Given the purpose of the research, within the scope of the article, we plan to carry out *the following research tasks*: clarification of the prerequisites, forms and methods of building a model of the local self-government system in the Republic of Poland, taking into account the observance of the principles of decentralization; carrying out a comparative analysis of the construction of this model in Poland and Ukraine; identifying effective forms of implementation of the principles of decentralization of the model of local self-government in Poland and forecasting the possibility of their implementation in the process of local self-government reform in Ukraine.

*Research materials and methods.* Based on the defined research subject, we chose a comprehensive approach to the application of scientific research methods. The methodological basis of the research is the dialectical method, the application of which allowed to comprehensively reveal the nature of the "model of building the local self-government system" as an organizational form of implementation of the principles of decentralization. The formal legal method was used to establish the legal basis for the proper functioning of the local self-government system; the application of the formal-logical method became the basis for identifying shortcomings in the national legal regulation and finding ways to overcome them.

## 2. Historical prerequisites for reforming local self-government

After the collapse of the USSR and the socialist bloc of Eastern European states, Ukraine and Poland found themselves in practically the same starting conditions with an ineffective planned economy, outdated production, centralized administrative and command management, low income levels and a post-totalitarian legal and political culture. The successful implementation of a number of political, economic and administrative reforms allowed Poland to significantly accelerate the pace of development and become one of the most developed countries in Eastern Europe, to meet the criteria for membership in the European Union and join it in 2004. At the same time, the lack of political will to carry out radical reforms in Ukraine, the non-acceptance of reformist ideas by a significant part of society significantly slowed down the modernization processes of our state, making it a European outsider in many indicators of political and socio-economic development 30 years ago, and only since 2015 decisive changes in the field of decentralization in Ukraine began to take place.

One of the main factors that ensured the rapid development of the Polish state and created the prerequisites for its integration into the European community was the successful

decentralization of state power, the transition from a communist authoritarian system of governance to a modern democratic one, the mental similarity of mass legal awareness, as well as a long common historical past. It is also important that millions of Ukrainian citizens, who in search of income worked at Polish enterprises, are already familiar with Polish models of public administration, primarily local, and therefore will accept the introduction of similar models in Ukraine without much resistance.

### **3. Characteristic features of the Polish reform of decentralization of local self-government**

The characteristic features of the Polish reform of the decentralization of state power in Poland, which ultimately brought it success, are its scientific validity, provision of political support and systematicity, which was manifested in the mutual consistency of its main components - the redistribution of powers, the creation of new local self-government bodies, the revision of administrative - territorial organization, consolidation of territorial communities and ensuring their financial capacity. In addition, the Polish decentralization reform was carried out in clear coordination with measures to reform sectoral public administration in the sphere of budget, finance, education, health care, etc. (*Moroz, O., 2017: 2*). Approaches to ensuring the scientific validity of the reform of power decentralization in Ukraine and Poland differ significantly. Undoubtedly, in recent years, domestic legal science, as well as the science of public administration, has been significantly enriched by a significant number of scientific studies on the issues of local self-government and decentralization of state power, however, even now there is no single uncontroversial scientific concept of reforming the public administration system, and the vast majority of the opinions expressed by scientists ideas, developed models and projects exist only in the form of monographic or dissertation studies and publications and are not in demand at the highest levels of state power. In terms of providing a scientific basis for the decentralization reform, the Polish experience is fundamentally different from the Ukrainian one.

In particular, at the end of the 80s of the 20th century, when the processes of restoration of democratic Polish statehood were just beginning, on the initiative of the leader of "Solidarity" Lech Wałęsa, the Commission for Local Self-Government Affairs was created, headed by Professor E. Regulski, and the work of this commission included representatives of the Polish Academy of Sciences, Warsaw and Łódź Universities are involved (*Fediaieva, M. S., 2014: 141*). Subsequently, E. Regulski was appointed to the post of Government Commissioner for Territorial Administration Reform, and it was this team of scientists who developed the scientific rationale for the new system of public administration, models of interaction between central and local state authorities and local self-government (*Kaminski, M., 2000: 17*).

Ukrainian science has no less achievements than Polish science, but its ideas and achievements remain virtually undemanded, primarily due to the lack of institutionalized communication between scientific institutions and state authorities. However, taking into account the positive Polish experience, it is worth creating a Government Commission on Decentralization of State Power and Development of Local Self-Government from among the most authoritative scientists in the field of administrative, constitutional law and public administration, giving its head the status of a government commissioner. Considering the sufficiently large number of domestic scientific developments in this field, the main directions and basic parameters of the reform of the decentralization of power in Ukraine can be developed by such a commission and submitted for consideration by the government and the parliament in an acceptable short time.

The Polish reform of the decentralization of state power is also favorably distinguished by the measuredness and clear sequence of its main stages. The vast majority of scientists distinguish two main stages of decentralization reforms in Poland - from 1989 to 1998 and from 1998 to the present (*Bairak, S., 2013: 256; Vorona, P. V., Drohomiretska, M. I., 2016: 114*). The main direction of the first stage of the reform was the restoration of real local self-government at the basic level of the commune, the transfer of a significant share of power by local self-government bodies, and the formation of the institutional and resource base of local self-government. Also, at this stage, the three-level system of territorial organization (commune, county, voivodeship) was restored. The second stage of the reform was marked by more fundamental changes in the Polish public administration system, in particular, local self-government bodies were created at the county and voivodship levels, and the content of the powers of local executive bodies was revised, as a result of which the voivodships actually completely lost their administrative powers, instead receiving powers to control over the legality of the activities of local self-government bodies. The decentralization of powers made it possible to consolidate public administration bodies at the voivodeship level, which created the prerequisites for revising the territorial system and reducing the number of voivodeships from 49 to 16 (*Vilzhinskyi, V., 2014: 269*).

As noted by M. S. Fedyayeva, such a sequence of stages of the decentralization reform carried out by Poland allowed first to accumulate practical experience in the management of local self-government bodies, and already on the basis of it to consistently introduce new forms and models of public administration at all levels of the territorial system, which ensured compliance interests of citizens and the integration of Poland into the European Union (*Fediaeva, M. S., 2014: 145*). The Polish legislation on local self-government developed in the same way. In particular, the independence of local self-government was restored in the course of democratic transformations in 1989 and recorded in the Law of March 8, 1990 "On Commune Local Self-Government", later the principles of power decentralization and subsidiarity as the basis for determining the powers of local self-government bodies were enshrined in the Constitution of the Republic Poland from April 2, 1997; and only after the mechanisms of functioning of local self-government powers at the basic level were worked out, its development at the level of poviats and voivodships began, accordingly, on 06.05.1998, the Laws "On local self-government of the poviat" and "On local self-government of the voivodship" were adopted (*Hrobova, V.P., 2015: 80*).

#### **4. Ways of reforming the system of local reform in Ukraine, taking into account decentralization**

Compared to Poland, the evolution of Ukrainian legislation in the field of activities of local executive bodies and local self-government bodies looked quite illogical and unsystematic: executive bodies of district and regional councils were periodically created and liquidated, representative offices of the President of Ukraine were created and liquidated at the level of districts and regions, local state administration, a draft of amendments to the Constitution of Ukraine was submitted to the Verkhovna Rada of Ukraine for consideration, which provides for their liquidation, but later this draft was withdrawn, the mechanism of relations between local self-government bodies and executive authorities was repeatedly changed, practically every modification of tax and budget legislation leads to a review of powers local self-government bodies, etc. Despite all this, such a model of functioning of local self-government at the basic level of a village, town or city, which would contribute to the formation and sustainable

development of financially and organizationally capable territorial communities, has not yet been formed.

A certain positive step of Ukraine in the direction of solving this problem can be considered the processes of formation of OTG and state assistance in their development, however, the legal support for the operation of OTG is far from ideal, since the Law of Ukraine "On the Voluntary Association of Territorial Communities" emphasizes the procedural issues of the formation of OTG, and not the means of ensuring their capacity. That is why, and based on the Polish experience of reforms, we can conclude that the submission to the Verkhovna Rada of Ukraine of draft No. 4178-a of the Law "On Amendments to the Constitution of Ukraine (Regarding the Powers of State Authorities and Local Self-Government)" was premature, and its recall is correct. In our opinion, first the legislative mechanisms for regulating the activities of local government organizations and ensuring their financial capacity should be worked out, then the mechanisms for transferring a significant share of the powers of local state administrations to the competence of local self-government bodies should be worked out, and only after that it will be possible to revise the existing mechanisms of public management on levels of districts and regions, as well as solving the question of the feasibility and necessity of consolidating districts and regions.

It is worth noting that the Polish experience of consolidating and changing the boundaries of counties and voivodships can also be effectively used in the course of the reform of the administrative and territorial system of Ukraine. In domestic scientific and journalistic literature, the Polish model of public administration, characterized by the absence of executive power bodies at the district level and the consolidation of voivodships, as a result of which their number decreased by three, is often used as an argument to justify the need for significant consolidation of regions and districts. Indeed, the consolidation of voivodships in Poland, carried out in the 90s of the 20th century, helped to increase the efficiency of public administration, but for an objective assessment of the possibility of implementing similar measures in Ukraine, it is necessary to carry out a quantitative analysis of the composition of the population living within the framework of administrative-territorial units similar levels.

According to the State Statistics Service of Ukraine, in 2018, the population of Ukraine, excluding temporarily occupied territories, was 42.2 million people who lived in 24 oblasts and the city of Kyiv (490 districts). Accordingly, the average population for the region is 1.69 million inhabitants, and for the district - 86 thousand inhabitants. As of 2017, the population of Poland was 38.5 million people living in 16 voivodships (445 urban and rural poviats) (*Sarnetska, Ya. A., 2017: 61*), i.e. the average population of a voivodship is 2.4 million people, and the county - 87 thousand people. As we can see, the average population of a county in Poland is practically the same as the average population of a district in Ukraine, moreover, these indicators of Poland and Ukraine differ little from the average European population of an administrative-territorial unit of the subregional level, which is close to 100,000 inhabitants (*Alforov, S.V., 2013: 49*). On the other hand, the average population of a voivodship in Poland is almost one and a half times higher than the average population of a region in Ukraine, but this indicator is also quite clearly correlated with the differences in the population density indicators of both states. To date, 490 districts have been liquidated and 136 new districts have been created by Resolution of the Verkhovna Rada of Ukraine dated July 17, 2020 No. 807-IX. The boundaries of districts are established along the outer border of the territories of rural, settlement, and urban territorial communities, which are part of the respective district, and elections of deputies of district councils are not held in liquidated districts. At the same time, the specified haste in the adoption of this document and subsequent elections of local district councils led to the fact that the issue of financing newly formed districts became acute.

In the course of the Polish decentralization reform, there was a radical redistribution of powers between the executive and local self-government bodies, which made it possible to build a system of local self-government truly independent of the state and ensure the maximum implementation of the principle of subsidiarity in relations between them. Decentralization processes in Poland are based on the idea that local self-government bodies solve all tasks of public administration at the local level independently and on their own behalf (*Paliichuk, T. V., 2016: 135*). From an organizational point of view, this was reflected in the fact that at the very beginning of the first stage of the reform (1990), all civil servants became municipal employees, and the bodies of executive power at the commune and county levels ceased to exist. Polish legislation defines the limits of delegated powers of local self-government bodies extremely narrowly: according to Art. 166 of the Constitution of the Republic of Poland, if necessary, the central government can delegate certain powers to local self-government bodies, but such delegation is of an exclusive nature and can be carried out only in the form and manner determined by law (*Boryslavska O., Zaverukha I., Zakharchenko E., 2012*).

Comparing the volume of own and delegated powers of local self-government bodies of Ukraine and Poland and analyzing the overall level of efficiency of their activities, it is possible to conclude that the vast majority of powers defined by the Law of Ukraine "On Local Self-Government in Ukraine" as delegated powers of executive bodies of rural, settlement and city councils (except those related to ensuring the sovereignty, defense capability, internal and external security of Ukraine) to the category of their own powers is supported by the positive practical experience of the functioning of the public administration system of the Republic of Poland.

### **5. Positive experience of Poland in the field of decentralization and ways of borrowing it in Ukraine**

The reform of decentralization of state power carried out by Poland made it possible to form territorial communities with a sufficient level of financial capacity, and if at the end of the 80s of the 20th century. the Polish and Ukrainian communities were at approximately the same level of material and financial support, now the amount of expenses financed from local budgets per member of the territorial community of Poland exceeds the corresponding indicators of Ukraine by 16 times, and the amount of the share of expenses from local budgets in the consolidated budget Poland's is the highest among all new EU member states, and higher than the corresponding pan-European indicator (*Fediaieva, M. S., 2014: 74-75*). The main basis of this progress of Polish local self-government was broad financial and fiscal decentralization, as well as the transfer to territorial communities of significant amounts of state property and part of the income from state property located on the territory of the respective communities.

The main part of the state property was transferred to the communal ownership of communes at the first stage of the decentralization reform, and now the share of income from the use of such property, including the rent for it, is about 7% of all revenues of local budgets. In addition, 25% of the income from the property remaining in state ownership is directed to the budget of the counties on whose territory it is located. In our opinion, a similar experience of financing local budgets in Poland can be used in Ukraine as well. Regarding similar incomes, Art. 29 of the Budget Code of Ukraine defines a complex and unsystematic list of payments, which in certain proportions is directed to the State Budget, in particular: 37% of the rent for the special use of forest resources in the part of wood harvested in the order of felling for main use, 45% of the rent for the special use of water (except rent for the special use of water of

water bodies of local importance), 70% of the rent for the use of subsoil for the extraction of minerals of national importance; 95% of the rent for the use of subsoil for the extraction of oil, natural gas and gas condensate; 45% of environmental tax, etc., and payments such as rent for the transportation of oil and oil products through main oil pipelines and oil product pipelines on the territory of Ukraine; rent for transit transportation of ammonia through pipelines on the territory of Ukraine; rent for the use of the radio frequency resource of Ukraine; concession payments for state-owned objects and others are fully credited to the State Budget of Ukraine. In our opinion, the introduction of a uniform share of income from state property, which should be directed to local budgets, and proper scientific justification of the size of such a share, based on the Polish model, will contribute not only to increasing the financial capacity of territorial communities, but also to ensuring the transparency of relations related to the disposition of state property property.

The Polish system of local self-government is also characterized by a high level of fiscal decentralization, which is based on the norm of Art. 168 of the Constitution of the Republic of Poland, which defines the right of local self-government subjects to set local taxes and fees within the limits set by law (*Shapoval, V. M., 2018: 58*). It should be noted that the legislation of the vast majority of countries in the world, including and Ukraine, contains provisions that establish the powers of local self-government bodies or directly territorial communities in the field of establishment and (or) collection of local taxes and fees. Domestic scientists quite rightly point out that Ukrainian tax and budget legislation is highly centralized and does not ensure the financial independence of local self-government bodies, as declared by the EHMS, the Constitution of Ukraine and the Law "On Local Self-Government in Ukraine". At the same time, the decentralization reform carried out by Poland ensured the establishment of real fiscal and budgetary autonomy of local self-government, which not only helped the development of territorial communities, but also led to a decrease in the volume of state subsidies to local budgets. As T. Paliichuk notes, the average indicator of financial security of the exercise of self-governing powers with the funds of local budgets at the commune level is 93%, and at the county level - 79% (*Paliichuk, T. V., 2016: 137*).

Among the main local taxes and fees, Polish legislation defines personal income tax, inheritance and gift tax, real estate tax, forestry tax, transport tax, dog owner tax, as well as market and administrative fees. The main feature of the mechanism of taxation by local taxes in Poland is that the maximum tax rates are determined by law, local self-government bodies are entrusted with the duty to ensure the correctness of their calculation and complete payment. At the same time, tax legislation does not directly provide for any benefits or zero rates. At the same time, the headmen of the commune (*viyts*) are given the right to grant tax benefits to its residents, in particular, on real estate, by delaying, paying in installments or canceling tax payments (*Rosoliak, O., Martsiias, I., 2016: 68*). In this way, the Polish state ensures real fiscal independence of local self-government. Instead, the legislation of Ukraine only declares such independence and is not aimed at ensuring fiscal decentralization.

First, personal income tax, which in Poland and many other states that have successfully implemented decentralization reforms, is a local tax, according to Art. 9 of the Tax Code of Ukraine is a national tax. In accordance with Articles 29, 64, 66 of the Budget Code of Ukraine, the personal income tax is distributed as follows: 25% is credited to the State Budget of Ukraine, 15% to regional budgets, 60% to district budgets, budgets of cities under oblast control, and OTG. For the city of Kyiv, there are special rules for the distribution of personal income tax, according to which 40% is credited to the budget of the city of Kyiv, and 60% to the State Budget of Ukraine. Attention is drawn to the fact that territorial communities that have

not decided to join the OTG do not receive any personal income tax deductions at all. This situation with the distribution of personal income tax is a clear violation of the principles of justice and equality, since residents of different territorial communities receive a different degree of access to public finances, which depends on whether they have formed an OTG or not, although according to the Law of Ukraine "On Voluntary "unification of territorial communities" such association is a right and not an obligation of communities.

Secondly, the Tax Code of Ukraine establishes an extremely wide list of benefits and exemptions from paying both personal income tax and local taxes, in particular, property tax (land tax and tax on immovable property other than land). In our opinion, there is a direct violation of the right of territorial communities to independently resolve fiscal issues of local importance, since the Verkhovna Rada of Ukraine, establishing in the Tax Code of Ukraine benefits from paying taxes and fees, which should be fully or partially included in local budgets, actually deprives territorial communities the right to receive and dispose of the relevant funds. The solution to this problem can only be a fundamental revision of the tax legislation of Ukraine, which would provide for the transfer of the tax on the income of individuals from the category of state-wide to the category of local taxes, as well as the cancellation of any benefits from local taxes and fees in the Tax Code, with the simultaneous granting of the right to set such benefits to local councils.

## 6. Conclusions

The Polish system of local self-government is characterized by the presence of such a specific mechanism of delegation of power, such as their transfer between local self-government bodies of different levels. Within the framework of this mechanism, the powers of the self-governing bodies of the voivodship can be delegated to the relevant district bodies if necessary. In our opinion, this type of delegation of powers is a completely natural continuation of the principle of subsidiarity, as it is applied in the case when a certain administrative authority is legally assigned to a local self-government body of one level, but can be most effectively implemented by a local self-government body of another level - both higher and lower. Ukrainian legislation does not allow such delegation of powers between local self-government bodies of different levels at all. That is why one of the measures of the decentralization reform in Ukraine should be the enshrining in the Law "On Local Self-Government in Ukraine" or in the prospective Municipal Code of Ukraine the provision that local self-government bodies can enter into administrative agreements with each other on the delegation of power and the transfer of necessary for them implementation of financial and (or) material and technical resources.

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