

## **Decentralization of Public Authorities in Ukraine: Administrative-Legal, Environmental, Social and Customs Aspects**

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### **ABSTRACT**

The purpose of the research is to reveal the administrative-legal, environmental, social and customs principles of decentralization of public authority in Ukraine. Main content. The article reveals the main definitions of decentralization of power, analyzes advantages and disadvantages of the decentralization process in the public administration system. The article also presents the basic typology of decentralization of power in foreign countries and characterizes these types, as well as an attempt to summarize the reasons for performing decentralization in Ukraine. Methodology: The use of systemic, functional, and structural methods in this study made it possible to define concepts, types, as well as to establish the reasons for introduction of the decentralization reform in Ukraine. Conclusions. Various approaches to performing the reform in European countries and its results have been considered, which is due to the need to implement decentralization in Ukraine. The result of the work consists in determination of the main definitions of the decentralization of power, analysis of advantages and disadvantages of the decentralization process, definition of the main types of decentralization, as well as generalization of the main reasons for introduction of decentralization in Ukraine.

Keywords: Administrative-Legal Aspect, Environmental Aspect, Decentralization, Customs Aspect, Public Authority, Local Self-Government, Social Aspect.

### **ABSTRAK**

Tujuan dari penelitian ini adalah untuk mengungkap prinsip-prinsip administratif-hukum, lingkungan, sosial dan adat istiadat dari desentralisasi otoritas publik di Ukraina. Isi utama. Artikel tersebut mengungkap definisi utama desentralisasi kekuasaan, menganalisis kelebihan dan kekurangan proses desentralisasi dalam sistem administrasi publik. Artikel ini juga memaparkan tipologi dasar desentralisasi kekuasaan di luar negeri dan mencirikan tipe-tipe tersebut, serta upaya merangkum alasan dilakukannya desentralisasi di Ukraina. Metodologi: Penggunaan metode sistemik, fungsional, dan struktural dalam penelitian ini memungkinkan untuk mendefinisikan konsep, jenis, serta menetapkan alasan diperkenalkannya reformasi desentralisasi di Ukraina. Kesimpulan. Berbagai pendekatan untuk melakukan reformasi di negara-negara Eropa dan hasilnya telah dipertimbangkan, hal ini disebabkan perlunya penerapan desentralisasi di Ukraina. Hasil kerja tersebut terdiri dari definisi definisi utama desentralisasi kekuasaan, analisis kelebihan dan kekurangan proses desentralisasi, definisi jenis utama desentralisasi, serta generalisasi alasan utama diperkenalkannya desentralisasi di Ukraina. .

Kata Kunci: aspek administratif-hukum, aspek lingkungan hidup, desentralisasi, aspek adat istiadat, kewenangan publik, pemerintahan daerah, aspek sosial.

## **INTRODUCTION**

An optimal model of cooperation in the system of state and local authorities through the transfer of powers to localities ensures a fairly rational organization of public authorities (Sukma & Zulheldi, 2021). In turn, this process of transferring more powers to lower-level authorities constitutes the very essence of the decentralization process. Against the background of various processes taking place at the current stage in the territory of Ukraine, this problem is quite important, because in order to establish an effective system of government in Ukraine it is necessary to solve problematic issues regarding excessive centralization of powers and financial resources of executive bodies, conflicts of powers and responsibilities between local government authorities and bodies of local self-government, underdevelopment of self-organization of the population and inter-municipal cooperation. In this regard, Ukraine stands at the start of implementing large-scale reforms aimed at establishing a democratic, legal, social state, improving welfare of the population, improving the political and state-management systems, renewing the national atmosphere, and strengthening the authority of the state on the international arena.

Reconstruction of society and achievement of sustainable development of our state is possible if a sufficiently effective management system at all levels of state power is available. Interaction between various branches of government should be based on a clear strategy of national policy.

Carrying out reforms in Ukraine turned out to be quite a difficult task, to a greater extent due to the lack of generalized, systematic knowledge about these processes among a large number of the population. Achieving a rational rethinking of the ratio of centralization and decentralization, changing the role, responsibilities and powers of executive power bodies and local self-government bodies being public power authorities is one of the methods of achieving an effective state functioning.

The topic of decentralization of public authorities has been considered for a long time by both foreign and domestic scientists, among whom it would be appropriate to mention M. Ketting, J. Scott, P. John, as well as O. Boryslavska, I. Zaverukha, M. Izha, V. Kubyda and others. The interest of scientists is due to the fact that in most countries of the European Union, the processes of decentralization have been implemented quite effectively, and therefore the experience gained by other countries is significant for Ukraine during introduction of these processes.

To date, the state has undertaken to ensure adoption of all necessary laws for the transfer of powers and resources to localities. The state also provides organizational and methodical support for the process of unification of territorial communities, which takes place on the basis of the Law of Ukraine "On Voluntary Unification of Territorial Communities". One of the first steps consisted in budget decentralization, and this was quite successful. After all, thanks to the new budget policy, local communities received additional funding for infrastructure development: repair of road surface, implementation and repair of street lighting, solving issues of water supply and drainage, as well as disposal of household waste, etc. All this testifies to the effectiveness and irreversibility of decentralization in Ukraine. The next step is the decentralization of management, which should be carried out on the principles of expediency, responsibility and justice.

Among domestic and foreign scientists who studied the problems of decentralization of power, we can name V. Andruschenko, N. Nyzhnyk, Pohorilko, O. Lazor, L. Pysmachenko, L. Sus, M. Baimuratov, I. Hrytsyak, V. Shapoval, A. Kolodiy, Y. Leheza (Leheza *et al.*, 2022). However, it is worth noting that insufficient attention was paid to the comprehensive study of the decentralization reform in Ukraine. This is what led to the choice of the topic of this article.

Although the problem of decentralization is not new, it is quite relevant against the background of the recent events. First of all, it is necessary to clarify the essence of the concept of decentralization of state public authorities.

## **RESEARCH METHOD**

The research is based on the works of foreign and Ukrainian researchers regarding methodological approaches to understanding the administrative-legal, ecological, social and customs principles of decentralization of public authorities in Ukraine. With the help of the epistemological method, the essence of the administrative-legal, ecological, social and customs principles of decentralization of public authorities in Ukraine was clarified; thanks to the logical-semantic method, the conceptual apparatus was deepened, the essence of the administrative-legal, ecological, social and customs principles of decentralization of public authorities in Ukraine was determined. In order to get an idea of the peculiarities of the administrative-legal, ecological, social and customs principles of decentralization of public authorities in Ukraine over the past five years, we analyzed statistical data, which, unfortunately, are not based on all the canons of statistical generalization, since we did not have access to all blocks of information. However, thanks to the available data, it was possible to analyze the administrative-legal, ecological, social and customs principles of decentralization of public authorities in Ukraine.

## **RESULTS AND DISCUSSION**

Decentralization is the process of redistribution of functions, powers and people from the central administration. Decentralization of power includes both administrative and political sides. It can be both territorial one (transfer of power from the central city to other territories) and functional one (through transfer of powers and decision-making from the main body of any ministry, service or department of the Cabinet of Ministers of Ukraine to officials of lower levels of public authorities).

There are a large number of approaches to the definition of the concept of “decentralization”; among these approaches the following ones can be singled out: independence in management approaches; transfer of part of the state management functions of central executive bodies to local executive bodies (Obolenskyi, 2005); transfer of part of functions and powers of the higher levels of management to the lower and the weakening or abolition of centralization; the process of redistribution of power and scope of competence between the central and local levels (Kolyshko, 2003).

It is also important to note the position that “in general, the essence of decentralization consists in the fact that functions and powers on exercising of the unified state power, originally belonging to the people, are distributed between the relevant state power bodies, on the one hand, and state power bodies and local self-government bodies on the other hand. In the first case, it is about the distribution of functions and authorities concerning unified state power, primarily between the highest bodies of the state, which is reflected in the principle of dividing state power into legislative one, executive one and judicial one. While reflecting the principles of the relationship between the parliament, the head of state and the government this method of decentralization of state power is known to be covered by the concept of the form of state government” (Bordeniuk, 2005).

A large explanatory dictionary of the modern Ukrainian language defines the term “decentralization” as a management system presupposing that a certain part of the functions of the

central government are transferred to local self-government bodies; expanding the rights of lower management bodies (Leheza *et al.*, 2019).

In political science, the term “decentralization” (from the Latin *de...* - prefix meaning negation, and *centralis* - middle) is a management political system designed to implement powerfully significant practical decisions that are geographically or organizationally outside the direct influence of the central government; a political process that involves delegation of certain powers by the central government to the local level in order to optimize practical solution of issues of national importance, as well as implementation of specific regional and local programs.

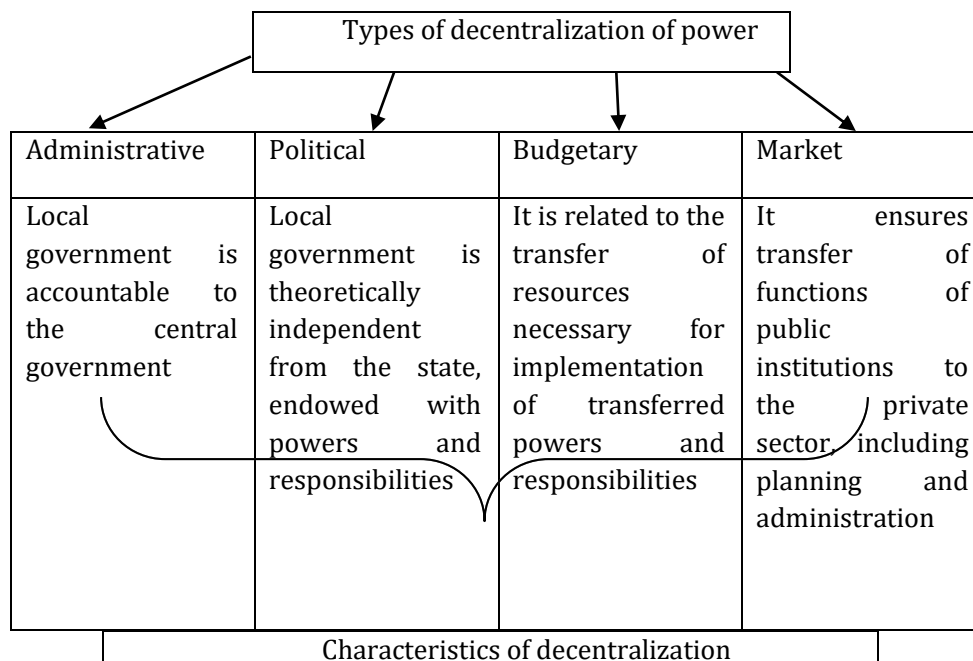
I. Hrytsiak defines the decentralization of state administration as activity of independent local self-government as a result of state powers transferred to them, as well as the process of expanding and strengthening rights and powers of administrative-territorial units or lower bodies and organizations while simultaneously narrowing rights and powers of the corresponding center (Hrytsiak, 1997).

While studying the issue of decentralization, Ye. Leheza notes that this process is a special way of reproducing centralization and it acquires manifestation of its opposite side. General government bodies of lower levels of government get an opportunity to independently and finally make decisions that fall within their competence (Leheza *et al.*, 2023). M. Korneyev believes that decentralization is a typical characteristic for the sphere of public administration, and this phenomenon, determined by objective and subjective factors, is a certain opposite side of centralization, a kind of means of its reflection (Korneyev *et al.*, 2018).

When considering advantages and disadvantages of decentralization, a number of advantages of this process can be identified, including: simplified structure of local management, establishment of closer ties with civil society, increased transparency of management decision-making, stimulation of decision-making based on reordination, increased degree of responsibility to the territorial community. Disadvantages of decentralization of power include risks of inconsistency in development directions of individual territorial units and strategic goals, complications of coordination between levels of management, threat of monopolistic position of the state in certain areas (Leheza *et al.*, 2023).

If we talk about typology, decentralization can be divided into administrative, political one, budgetary one and market one (Villasmil Espinoza *et al.*, 2022). Under administrative decentralization, real subordination to central authorities is preserved; political decentralization means decentralization of authorities and management, management decision-making; budgetary decentralization provides for the decentralization of financial and material resources, which is the basis for economic independence of individual territories; market decentralization involves distribution of individual functions of analysis and management to state and private structures (Figure 1). All these types of decentralization are interconnected, they reinforce the general trend and complement each other.

Effective decentralization is impossible without real self-management of the lower levels of government and democracy as a way of exercising power. Decentralization is a specific management method that is quite important for local democracy and the development of self-government. In their works domestic scientists consider decentralization as redistribution of powers between the center and regions in favor of regions, delegation and sub-delegation of functions and powers to regions, etc. Decentralization is characteristic of the state administration system, which is determined by various factors, and primarily due to the division of functions between central authorities and local self-government bodies (Zhukova *et al.*, 2023).



**Fig. 1 Characteristics and types of centralization**

The process of decentralization of power is one of the priority areas of the administrative reform in Ukraine and it involves increasing the role of regional state authorities and local self-government bodies in implementation of economic and structural reforms. Decentralization accelerates changes in the economy of territories, optimization of state and communal property management, and development of cross-border and regional cooperation in various spheres of social life (Bezpalova *et al.*, 2021).

The process of decentralization of power in Ukraine combines regional and national interests of balancing centralization and decentralization in local self-government institutions. The constitutional principle of the independence of local authorities is mandatory for decentralization of power as well as for bringing it closer to the population, creating conditions for the most complete and prompt identification and satisfaction of people’s needs. In addition to that, decentralization acts as one of the forms of development of democracy, which allows to preserve the state and its institutions and at the same time expand local self-government, achieve activation of the population in the issue of solving their own needs and interests, reduce the spheres of influence of the state on the society by means of replacing this influence with mechanisms of self-regulation produced by the society itself, reduce the costs of the state and taxpayers for the maintenance of the state apparatus (Buha *et al.*, 2022).

Among the reasons for introduction of power decentralization in Ukraine, the following should be mentioned:

1. Excessive centralization of power in relation to decision-making. In Ukraine, from the very beginning of its declaration of independence, the issue of decentralization of power occupied a rather important place. This issue has become particularly activated in 2014. Since 2010, a super-presidential republic actually existed in Ukraine, under this form of republic a strict centralization of powers and resources was established in the vertical of executive authorities. In such conditions, the role of the Cabinet of Ministers as the highest body in the system of executive power was significantly limited, the Verkhovna Rada found itself in a status when there was a threat to existence of parliamentarism in Ukraine, local self-government was

actually nullified, the financial independence of territorial communities was destroyed, and corruption became unprecedented.

2. The financial incapacity of local authorities is caused by weakness of the financial base, insufficient resources to solve everyday issues of community development.
3. Violation of the principle of subsidiarity in the issue of distribution of powers and formation of stable sources for filling local budgets. The possibilities of local self-government bodies in regulating the rates of local taxes and fees, establishing benefits, strengthening the revenue base of local budgets due to the reduction of tax benefits, etc., remain limited.
4. Non-compliance of the current system of the administrative and territorial organization of Ukraine with the requirements of ensuring the ubiquity of self-government. A large number of small territorial communities, the absence of enterprises on their territory that would bring a stable profit, a low level of income of the population cause the problem concerning pumping local budgets, and this creates difficulties in terms of local development management.
5. Lack of responsibility for the development of the territory, low level of trust between the authorities and public organizations.
6. Unsatisfactory state of infrastructure development, as well as low quality of services provided to citizens of one or another community.
7. Deterioration of the quality and availability of public services as a result of the resource incapacity of the vast majority of local self-government bodies to exercise their own and delegated powers.
8. Differences in views regarding socio-economic development between local self-government bodies and the real interests of territorial communities.

A decrease in the level of professionalism of local self-government officials, in particular due to the low competitiveness of local self-government bodies on the labor market, a decrease in the prestige of positions which leads to low efficiency of management decisions

### **Foreign experience of European countries regarding decentralization of power**

There are several models of local self-government in foreign countries. These models differ significantly from each other in their types of formation of local self-government, their type of interaction of local level bodies with state bodies (Izha, 2010).

In countries with a predominantly Anglo-Saxon model of local self-government the so called “positive” regulation of the activities of local authorities has been established. This principle is based on the observance by local self-government bodies and officials of the powers prescribed in the relevant statute.

In general, in the last century, the topic of decentralization was the most common topic in the world. Thus, in the countries of Eastern Europe, the beginning of the spread of decentralization fell on the beginning of the 90s. During the 20th century, organizational reforms could be observed. Implementation of these reforms took place under the influence of the central government. These reforms were aimed at changing the internal structure of territorial units and included such elements as a more open and public nature of the decision-making process, as well as public participation in their adoption. In many ways, these measures contributed to the active participation of local self-government bodies in the political systems of such countries as Italy and Great Britain, as well as to their transformation into leaders of state policy.

Decentralization provides for the autonomy of regions in accordance with the adopted laws, but the supreme authority decides the terms of the transfer and the list of powers transferred to the regions. Under certain circumstances, risks and dangers arise in decentralization, and under such conditions, some spheres of social and state life are not amenable to decentralization, and therefore the identified process has both positive and negative aspects (Table 1).

Table 1. Positive and negative aspects of decentralization

Positive aspects	Negative aspects
1. Reinforcement of local self-government, which has a significant amount of information about local conditions for decision-making, no costs are needed for transmission of information.	1. Likelihood of making incompetent decisions due to lack of information and lack of coherence.
2. The primary unit of the administrative-territorial system is presented by the community, which makes it possible to improve the socio-economic development of the region, taking into account socio-territorial interests.	2. Lack of funds to maintain budgetary institutions (educational institutions and hospitals) in small towns, constant threat of underfunding.
3. Consolidation of the principle of subsidiarity.	3. A significant share of local tax revenues is directed to the maintenance of state functions.
4. Timeliness of decision-making at the local level.	4. Duplication of functions at several levels.
5. Availability of a basis for emergence of new talented civil servants, reduction of management costs.	5. Isolation that leads to conflicts and impossibility of control.
6. A more flexible system of regulation, as well as absence of bureaucracy typical for centralized management.	

Some reforms included a set of measures aimed at decentralizing the powers of state authorities and transferring these powers to local self-government bodies. So, for example, in Great Britain, a reform was carried out regarding provision of social services for the purpose of bringing them closer to people. A similar decentralization of some state functions was also carried out in Italy.

Sweden has a two-tier model of self-government; it presupposes that municipalities and counties can be financed from local taxes, and this strengthens their autonomy. The Swedish model of a social state provides for a clear division of functions between the central government and two-tiered local government. The government authorities of this state have remained unchanged since the 18th century, and the administrative apparatus is small. Less than 20% of civil servants work in central management bodies.

Most social services in Sweden are implemented by municipalities, so 60% are municipal employees. The territorial reform carried out in due course further strengthened the power of municipalities and became the basis for further decentralization in the country. Today in Sweden, legislative regulation is rather “soft”, as far as the government pursues a policy of “non-interference” in the affairs of local authorities, and this is a clear example of the independence of local self-government (Shemshuchenko, 2007).

Germany with its traditions of federalism is a typical representative of a decentralized system. This concerns the relationship between the federal level and the “Lands” and occurs due to the strong political and administrative position of local authorities in their relations with the

central government. The powers and spheres of responsibility of the federation and the regional "lands" of Germany are clearly defined by the constitution; according to the constitution the federation is responsible for the formation of policy and legislation, and local authorities are subordinate to the "lands" with execution of the most public functions. In the course of reforming, the "lands" liquidated their administrations with the transfer of their powers to local authorities. Alongside with this, this country demonstrates a tendency to include local authorities in the state administration, that is, integration of local administrations into the state apparatus is performed (Korneyev *et al.*, 2018).

Formation of local public authorities in France also took place through decentralization. France was a fairly centralized state until 1980, but the reforms carried out created conditions for decentralization of power and democratization of the public administration system. During 1982-1986, more than 40 laws aimed specifically at decentralization were adopted in France. The success of French decentralization was confirmed by the agreement of political leaders and the approval of the reform by citizens. The last stage of reform in this country, which was carried out by making some changes to the Constitution of the French Republic of 1958 by the Constitutional Law of March 28, 2003, is not yet complete and is still ongoing.

Changes to the state system in Poland provided for decentralization of state structures in accordance with the principle of subsidiarity. Poland has gone through a long and rather painful path of decentralization of power. The self-government reform was aimed at changing the way of management at the local level, creating an independent self-governing "Gmina" administration, which was separated and subordinated to the democratically elected "Gmina council". Gmina is the smallest administrative-territorial unit in Poland. In 1990, the first decentralization reform was carried out, namely the first elections were performed to the lower level of local self-government (to gminas).

The experience of the first stage of the Polish self-government reform confirms the thesis that without creating opportunities for development of local self-government, it is difficult to imagine the construction of democratic institutions and effective opposition to stereotypical manifestations of behavior typical for the totalitarian period (Matviichuk *et al.*, 2022).

After a nine-year hiatus, the second and third levels were introduced, namely districts ("poviats") and regions ("voivodeships"). Each of the listed levels has its own functions, powers and finances. For this purpose, during all nine years, laws were passed; as a result of these laws the central government lost its monopoly, the unified budget system and state property were liquidated. A total of 150 such laws were adopted. The main motivation for carrying out the second stage of the self-government reform consisted in improvement of the efficiency of the state in solving local and regional problems, as well as in changing Polish territorial structures in accordance with the requirements of European integration.

Today, the budget is adopted separately in each region of Poland, the state does not manage the public property of the region, all the powers of gminas, districts and regions are clearly distributed at the legislative level.

It should be noted that candidates in Poland are elected by the people, and as a result of this the responsibility of the elected authorities to their voters increases. In addition, many spheres of public life are under the control of local self-government.

It is worth noting that most of the decentralization reforms that have been implemented recently in European countries were accompanied by an increase in the resource base of local



self-government bodies. Success was achieved through the unification of municipalities on a voluntary basis; therefore it is appropriate to apply this experience of implementation of territorial reforms in Ukraine as well (Leheza *et al.*, 2022).

The practice of European states makes it possible to single out the main conceptual approaches to reforming the system of administrative and territorial organization:

1. decentralization of state power and simultaneous increase in the powers of territorial communities in order to speed up their socio-economic development, providing quality services to citizens, and strengthening the principle of democratization in the activities of local self-government bodies;
2. unification of administrative-territorial units under a common administrative center;
3. mandatory adoption of the Law "On Administrative and Territorial Organization" as well as introduction of other normative acts regulating the status of individual administrative and territorial units;
4. the strategic direction of the country consists in the accession to the EU and implementation of the division of administrative and territorial units of the state in accordance with the requirements of NUTS (Nomenclature of Territorial Units for Statistics).

In the applied dimension, decentralization is accompanied by administrative and territorial reform. Models of such rationalization can be different and correspond to the specifics of the development of national political-legal systems. In order for the process of decentralization to take place more consistently and intensively, not only its complex constitutional and generally political and legal support, but also implementation of an appropriate control by civil society is mandatory (Dymko *et al.*, 2017).

In Ukraine, an important direction of decentralization is represented as introduction of creation of territorial communities for implementation of certain functions. Territorial community is a voluntary association of residents of several villages, settlements into a single administrative-territorial unit. So, the first attempts to unify (consolidate) communities are currently being applied in Ukraine (Tylchuk *et al.*, 2022).

The essence of local self-government reform in Ukraine consists in transferring of broad powers to localities. As a result of decentralization, local territorial communities will receive the authority to solve current problems and they will receive appropriate funding for this. At the community level, a more transparent and open provision of administrative services is possible. But at the same time, it should be remembered that the experience of consolidation of communities in various European countries was both positive and negative at the same time.

The main task of local self-government bodies is to create conditions under which citizens, relying on their own work, initiative and initiative, according to their talents and perseverance, would be able to provide for all their life needs. This requires stimulation of local self-government in matters of ensuring high standards of quality of life and those that would contribute to the general socio-economic development of the state through the synergy of interregional cooperation (Zadyraka *et al.*, 2023).

The experience of reforms in foreign countries shows that decentralization plays an important role in the process of democratization and transformation of society, transition to institutions based on the initiative and responsibility of an individual and the community. The tendency towards its widespread implementation is observed in the administrative, political, budgetary and financial, and social spheres, it contributes to the development of human potential,

responsibility of the authorities, improvement of the quality of the state and public services provided, consolidation of the society, and solution of economic, legal, political, and ethnic problems.

In addition to increasing the level of the democratic order stability, decentralization also promotes constant competition of all regions, which is another factor for constant improvement and prosperity of the country without violating its integrity.

## **CONCLUSION**

Based on all the above the following conclusions can be drawn. The process of decentralization of power is one of the priority areas of the administrative reform in Ukraine and it involves increasing the role of regional state authorities and local self-government bodies in implementation of economic and structural reforms. Decentralization accelerates changes in the economy of territories, optimization of state and communal property management, development of cross-border and regional cooperation in various spheres of social life. Therefore, the goal of the policy in the sphere of decentralization is to move away from the centralized model of governance in the state, ensure the capacity of local self-government and build an effective system of territorial organization of power in Ukraine, fully implement the provisions of the European Charter of Local Self-Government, the principles of subsidiarity, universality and financial self-sufficiency of local municipality. Therefore, useful and necessary points in the legislation on the decentralization of power in Ukraine include innovations that concern the consolidation of the principle of decentralization in the constitution regarding the organization of power and the principle of subsidiarity; separation of powers between various branches of government; the possibility of voluntary association (consolidation) of territorial communities; introduction at the regional level of strategic programs aimed at the development of regions.

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