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Administrative-Territorial Reform: The Experience of the Countries of Western Europe

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Abstract

The relevance of this article is conditioned by the decentralization of the reform of political power in Ukraine, which presents the State with the permanent challenge of finding new ways to solve the problems of governance and governability at the district and regional level. The objective of the article was to carry out a scientific investigation on the mechanism of introduction of institutes of prefects in Ukraine, based on the experience of the main western European countries. The main research methods are general and specific, including the methods of logic, analysis and comparison of the sources consulted. The results of this study are to identify ways to introduce an institute of prefects in Ukraine. By way of conclusion, it highlights the importance of the results obtained, which is reflected in the fact that this study can serve as a basis to delineate future changes to the current legislation of Ukraine on issues of state administration, at the district and regional level, by introducing the institute of prefects.

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Keywords: institute of prefects in Ukraine; public service; public administration; decentralization of power; administrative-territorial reform.

Reforma administrativo-territorial: la experiencia de los países de Europa occidental

Resumen

La relevancia de este artículo está condicionada por la descentralización de la reforma del poder políticos en Ucrania, que plantea al Estado el desafío permanente de encontrar nuevas formas de resolver los problemas de gobernanza y gobernabilidad a nivel distrital y regional. El objetivo del artículo fue realizar una investigación científica sobre el mecanismo de introducción de institutos de prefectos en Ucrania, basado en la experiencia de los principales países de Europa occidental. Los principales métodos de investigación son generales y específicos, incluidos los métodos de lógica, análisis y comparación de las fuentes consultadas. Los resultados de este estudio son identificar formas de introducir un instituto de prefectos en Ucrania. A modo de conclusión destaca la importancia de los resultados obtenidos que se refleja en el hecho de que este estudio puede servir como base para delinear cambios futuros a la legislación actual de Ucrania en temas de administración estatal, a nivel distrital y regional, al introducir el instituto de prefectos.

Palabras clave: instituto de prefectos en Ucrania; servicio público; administración pública; descentralización del poder; reforma administrativa-territorial.

Introduction

The new Ukrainian authorities continue to actively seek working mechanisms for effective decentralization of power and reform of the administrative and territorial structure of our country. Over the last ten years, various Presidents and Governments of Ukraine have discussed the beginning of these reforms by amending the Constitution of Ukraine regarding the separation of powers of local state administrations and local self-government bodies.

One of the most recent government initiatives is the introduction of a prefect institute in Ukraine, which provides for the actual replacement of heads of local state administrations by prefects with their functional

reorientation. As Roman Semenukha – the member of the Verkhovna Rada of Ukraine of the last convocation – noted, this new category of civil servants will receive appropriate control and supervisory powers in relation to the local self-government bodies and territorial bodies of the central executive authorities in the respective territory, and with respect to territorial executive bodies, they will also carry out coordination functions (Semenukha, 2014). Taking into account such initiatives, the foreign experience of establishing this institute of state power and its functioning is extremely important, because analysis of the practice of foreign countries, the problems they face and the ways to solve them, will help the state apparatus of Ukraine to build a stronger and more effective institute of prefect (Slobodian, 2016).

In the modern world, the prefect institute is represented in many developed countries, namely France, Italy, Belgium, Greece, the Netherlands, Portugal, Spain and others. Historically, these territories were influenced by the Roman Empire and it was during these times that the development of the prefect's institute began. The introduction of a prefect institute in Ukraine will make it possible to distinguish self-sufficient local self-government from centralized state pressure (including at the level of regions and districts). At the legislative level, it delineates powers and functions between local governments and the executive. Introducing the main function of prefects to exercise control over the legality of decisions of local self-government bodies will help to get rid of the corruption component in the activity of these bodies. But most importantly, ending decentralization by delegating powers from the actual management of territorial communities to regional and district councils, makes them accountable to the population of these localities for effective management and makes them the main authority in the region.

The practice of recent years has shown that local self-government bodies and their officials, heads of local executive bodies often make decisions with excess of their powers, with gross violation of the current legislation and go unpunished. That means, that the principle of the inevitability of punishment for an offense is not valid, since today there is no public authority, which should promptly respond properly to an illegal decision, stop it and demand to comply with the current legislation, or to apply to the court for its cancellation. In fact, state executive bodies and local self-government bodies of the respective territories of Ukraine remained out of state control today. Although certain aspects of their activities are undoubtedly under the control of law enforcement agencies (Rusnak, 2017).

Given the current demands of society, the central government is not able to adequately process large volumes of information and respond quickly enough to any change in the situation in its environment. Most of the tasks related to ensuring the standard of living of the population are carried out

not in the state but in the regions and places of direct residence of citizens. Being closest to the voter, local self-government bodies are more accessible to communication and therefore easier for citizens to evaluate their activity (Bairak, 2013).

The following methods were used during the research: general theoretical (analysis, synthesis, concretization, generalization, analogy method, modeling); empirical methods (research of functioning and implementation of public administration experience, determination of problems and ways of prefect institute introduction in Ukraine, research of normative-legal and scientific-methodical literature on the given issue, scientific researches and conclusions).

1. The processes of formation of the state and legislative structure of Ukraine

At the time of the declaration of independence, Ukraine did not have its own model of state governance, except for some elements that it inherited from the Soviet Union. The Declaration of State Sovereignty of Ukraine (1990) formally laid the groundwork for a new concept of government and the division of powers into three branches: legislative, executive and judicial. The young independent state has faced a need to create a body that would ensure the perfection of the hierarchical construction of the executive power and at the same time closely cooperate with the local self-government bodies. In order to solve this problem in Ukraine, the Law of March 5, 1992 introduced the post of Representative of the President of Ukraine, who was the head of the local state administration in the oblast, Kyiv, Sevastopol, district, district of Kyiv and Sevastopol.

Representatives of the President of Ukraine in the oblasts, cities of Kyiv and Sevastopol were appointed and dismissed by the President of Ukraine and obeyed him. A mandatory condition was the approval of their nominations with the respective Councils of people's deputies. The creation of such a model was dictated by the need to form a unified system of executive bodies headed by the President of Ukraine, who was also the head of the executive branch (Yaniuk, 2015). Following the adoption in 1999 of the Law of Ukraine "On Local State Administrations" (1999), the post of Representative of the President of Ukraine in the oblasts, cities of Kyiv and Sevastopol were eliminated and the positions of the head of the regional state administration in the oblasts, the heads of the city state administration in Kyiv and Sevastopol, and heads of district state administration at the district level were introduced.

In modern Ukraine, the system of state administration is implemented with the help of regional and district state administrations acting on a territorial principle. It is thanks to such administrative-territorial division that the President of Ukraine, the Government, ministries and other central executive bodies can carry out their functions in the field of public administration at the local level. Today, there are 24 regional state administrations in Ukraine, the state administration in Kyiv, 490 district administrations in the oblasts, and 10 district state administrations in Kyiv.

The regional and district state administrations in their activity are guided by the Constitution of Ukraine, the Law of Ukraine “On Local State Administrations” (1999) and other laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, higher level executive bodies, and district state administrations in the Autonomous Republic of Crimea. Also by the decisions and resolutions of the Verkhovna Rada of the Autonomous Republic of Crimea, decisions of the Council of Ministers of the Autonomous Republic of Crimea, adopted within the limits of their powers (The order of the Cabinet of Ministers of Ukraine, 2014). Thus, the main mission, within the limits of its powers, of the oblast state administration (OSA), is to exercise the executive power in the territory of the respective administrative-territorial unit – oblast, as well as to exercise the powers delegated to it by the respective regional council. The regional state administration in the territory of the oblast ensures the implementation of the Constitution and laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, and other executive bodies.

The OSA is responsible for the respect for the rights and freedoms of citizens, law and order in the region. The administration of the regional administration develops and supervises the implementation of state and regional programs of socio-economic and cultural development, environmental programs, and in the cities of compact residence of indigenous peoples and national minorities also the programs of their national and cultural development. OSA experts prepare and submit to the deputies of the respective oblast councils the budgets of the oblasts, as well as monitor its implementation, constituting the corresponding report. The regional state administration also exercises state control over:

- preservation and rational use of state property;
- use and protection of lands of forests, subsoil, water, atmospheric air, flora and fauna and other natural resources;
- protection of historical and cultural monuments, preservation of housing stock;
- compliance with manufacturers of products standards, specifications and other requirements related to its quality and certification;

- observance of sanitary and veterinary rules, collection, utilization and disposal of industrial, household and other wastes, observance of rules of improvement;
- adherence to architectural-building norms, rules and standards;
- observance of rules of trade, household, transport, public services, legislation on protection of consumer rights;
- adherence to legislation on science, language, advertising, education, culture, health care, motherhood and childhood, family, youth and minors, social protection of the population, physical culture and sports;
- labor protection and timely and not lower than the state minimum wage;
- observance of public order, rules of technical operation of transport and traffic;
- compliance with the law on state secrets and information.

The heads of regional state administrations, who administer regional state administrations for the fulfillment of the above mentioned powers and functions in accordance with the current legislation, make orders obligatory for executing by the heads of enterprises, institutions, organizations, their branches regardless of ownership and citizens on controlled issues, and raise the issue of their responsibility to central executive authorities in the manner prescribed by law. Regional state administrations, within their powers, direct the activities of district state administrations and exercise control over their activities. Heads of regional state administrations regularly inform about their activities the heads of regional state administrations, and annually and on request report to them. Regional state administrations have the same powers and rights as the OSA but within the administrative territory of the region.

One of the most pressing problems after the adoption of the laws “On Local Self-Government in Ukraine” and “On Local State Administrations” is the relationship between local state administrations and local self-government bodies. If we analyze the legislation of Ukraine on the relationship between local authorities (oblasts and region state administrations) and local governments, we can conclude that it is imperfect. It is easy to see that the powers often coincide. This causes some misunderstanding as to the limits of their implementation and leads to conflicts between local authorities and local self-government bodies. The proof of this is the results of the norms of the laws of Ukraine “On Local Self-Government in Ukraine” and “On Local State Administrations” analysis conducted by A.Y. Dudkina, who notes that most of the powers of local governments and local state administrations are the same, which leads to conflicts between them (Dudkina, 2013).

At the same time, one of the main pivotal problems of public administration, which is determined to be the most urgent and which continues to adversely affect the quality of the formation and implementation of public policy, is the problem of coordination of the authorities' activities. The fact that this condition is extremely important not only for Ukraine is evidenced by the statement of the famous American researcher and politician G. Seidman. He defined coordination as a philosophical stone of public administration: "If the right formula for co-ordination were found, it would be possible to reconcile the incompatible ones, to harmonize competing and diverse interests, to overcome irrationality in our state structures, and to make difficult choices that no one would dispute" (Kettl, 2015).

All of this has led to the imbalance of regional governance, heads of state administration most of the time are measured by community leaders of local governments, who have more authority and who are the most important in the region, instead of fulfilling the tasks set by central executive bodies. On the contrary, local councils suspend the powers of village, settlement, city mayors, often unlawfully. The mayors, in their turn, do not enforce the lawful decisions of the respective local councils, wrongfully suspend certain points of council decisions at a time when the law provides for the possibility of suspension of all decisions, not part of it. And this list can be continued. In these situations, there is no arbitrator who would intervene in time and "deal" with the wrongful situation.

2. The prefect's powers in the management of Western Europe

We believe that public authorities in Ukraine and its institutions are ineffective, which is due to the following reasons:

- the lack of the possibility for local and regional councils to independently implement local policies through their executive bodies;
- politicization of local councils and violation of the principle of representation of common interests of territorial communities in the formation of regional and district councils;
- imperfection of intergovernmental budgetary relations and lack of stable sources of local budgeting;
- insufficient staffing and organizational capacity of local governments to address local issues (Bairak, 2013).

Given the above, we can conclude that the development of civil society in Ukraine is growing rapidly, but existing local state administrations are

blocking it to some extent, taking over the powers that should be vested in local self-government bodies. That is why, in our opinion, communication between the state government and people living in a certain territory of a district, city or region results in inefficient, irresponsible and non-transparent management of a region that does not develop a territorial community, but only slows down this development. Therefore, Ukrainian society needs a deep, systematic and logical reform of decentralization of power in order to create a European-style country (Pchelina *et al.*, 2019; Syroid *et al.*, 2019).

The reform of decentralization of power in Ukraine that began with the adoption of the Verkhovna Rada of Ukraine by the Law of Ukraine dated February 5, 2015 No. 157-VIII “On Voluntary Unification of Territorial Communities” (2015) has in fact started the process of a new administrative-territorial division of our country. This Law establishes new mechanisms for regulating the relations that arise in the process of voluntary integration of territorial communities of villages, settlements, cities, as well as voluntary association with integrated territorial communities (Andriichuk, 2019). As Yu. Andriichuk noted in his scientific work, local development reform and decentralization have been called one of the most successful reforms in Ukraine in the last 10 years. The situation today in this area is the following. The Government has received a sound draft strategic and policy document for reform – the Concept of local government reform and territorial power organization, which has been prepared in the expert environment for many years, which also had positive conclusions by the Council of Europe (Andriichuk, 2019).

One of the latest government initiatives is the introduction of a prefect institute in Ukraine. The main goal pursued by the authorities is to replace the total control over territorial communities by local state administrations with effective state oversight of the legality and constitutionality of the decisions of local self-government bodies. And it should happen by eliminating the latter and creating a more efficient and optimized body – the institute of prefect. This reform provides for the actual replacement of heads of local state administrations for prefects with their simultaneous functional reorientation. For the average Ukrainian, the very concept of prefecture is not well understood, although for many citizens of many countries in the world this category of civil servant is quite common.

In fact, this reform is very similar to what was carried out in France in the early XIX century when the prefect institute in France was enacted by the Law dated 17 February 1800 by Napoleon Bonaparte, after the French National Assembly conducted a division of France into districts within the limits of decentralization of power. As part of this administrative and legal reform, the prefect becomes the sole central government in the district. Napoleon called the prefects “emperors in miniature” (Las Cases,

2010). Indeed, the prefect was really given very broad powers of command and security. And during the July monarchy, the political function of the prefects was also defined, which consisted in “rushing” candidates, needed by the government, during the organization and holding of elections.

Further prefects receive economic and social powers. Increasingly they are beginning to speak to community-based communities with economic initiatives, aimed at supporting the industry, as well as expanding primary education for all residents of the region and introducing an effective healthcare system on the district territory. But in the days of the Third Republic (early 1880), the prefect became the supervisory authority over the local self-government bodies, they have lost the powers of the heads of executive power of departments and regions, while the heads of general and regional councils obtained this function. In return, they received a supervisory function for these heads. Meanwhile, prior to the 1982 reform, the prefect was not only a local authority, but also an executive body of the department’s elected council: that is, the prefect was both an agent of the local government and a representative of the central government (Hanushchak and Chypenko, 2015).

The prefect in modern France, in contrast to the head of the district state administration in Ukraine, for the most part perform not administrative but controlling functions. In fact, prefect is a representative of the state in the relevant territory and acts in parallel with the executive body of the department. The control mechanism that the prefect should exercise is quite specific, but the results of such control are very effective. The prefect mainly follows the procedure for allocating and spending financial resources, and the programmatic and targeted planning and administration methods at his/her disposal are focused not on the final state of implementation of the territorial development program, but on the current indicators of prospects for achieving intermediate results. This makes it possible to adjust in advance the amount of resources allocated and used, as well as to direct the executive bodies of the department level to perform certain specific procedures which are most needed (Siryk, 2015).

According to Y. Hanushchak, there is no hierarchy between the prefect of the region and the prefect of the department. However, there is a rule: senior in rank – senior in age. As the prefect of a region is usually assigned a person who has already been the prefect of the department. There are 256 prefects in modern France, 126 of which are in the position of prefect, and the rest are in other government positions (Hanushchak and Chypenko, 2015). The prefect is both a representative of the state in the department and a local government body in that department.

Considering the legal status of the French prefect, Y. Kovbasiuk (2010) characterize him as the first hierarchy official of the department. Scientists determine that, acting on behalf of the state, the prefect controls

the observance of national interests, ensures the exercise of authority of central government bodies, keeps the government aware of the political situation in the department, is responsible for managing property owned by the state. The prefect implements government policy, oversees the enforcement of regulations of the central government, to ensure order he has the power to make decisions on the use of police forces. If a substantial offense that undermines national security is committed on the territory of the department, the prefect assists law enforcement agencies in finding the perpetrators, and in this role has the right to sign an arrest or search order (Harust *et al.*, 2019A; Harust *et al.*, 2019B).

Within the limits of administrative control over the activity of the department, the prefect may refer the decisions of local self-government bodies and their officials to the administrative court (Kovbasiuk, 2010). Therefore, the prefect tends more to the central government, he/she is empowered with sufficiently broad powers to make a number of decisions regarding the implementation of state policy in the respective region, but on the other hand, carries out the implementation of certain functions of local self-government (Hrobova, 2015). While researching the prefect institute in France, we consider it appropriate to divide the main functions of the prefect into 3 types:

- 1) general control function;
- 2) the function of overseeing the activities of local governments;
- 3) function of ensuring the safety and protection of the population.

It should be noted that the pre-emptive activity of prefects is very important for them to fulfill the role of mediators, that is, as a rule, being “untrained eye”, they are perceived by local political elites as an effective mediator in disputes between various local authorities, political forces (Martseliak, 2015). The provisions of the Administrative Code of France for local self-government, which determine the role of the prefect in solving the financial, economic and social problems of the region (department), are also important. It is the rules of this law that oblige the prefect to provide advice and help resolve the issue of employment for residents of the region, tax exemption, investment and debt restructuring of enterprises registered in the department (Baty, 2003; Vorona, 2017). This governance model gained popularity in countries such as Belgium, Greece, Italy, the Netherlands, Portugal and Spain during the XIX century.

Researching the establishment of the institute of prefect in Italy, it can be argued that a striking example of state formation for it was France. Thus, in the Italian Republic in 1802 a nearly identical system of prefecture as in France was created. The prefect was perceived as the executive of the elected regional government. The prefect in Italy became the sole representative of the Ministry of the Interior in the region, while most other ministries were

represented at the territorial level, at the provincial level. The Royal Decree of 1861 replaced the governorate with the position of prefect, who, until the fall of the fascist regime, would be an omnipotent figure, personally dispose of the fate of a particular region and virtually unresponsive to the local population (Vorona, 2017).

Following the unification of Italy, a law was adopted on March 20, 1865 N. 2248 “On the reorganization and centralization of a new state” also known as the “Lenz’s law” (Vorona, 2017), according to which:

- the prefect represents the executive throughout the province;
- exercise the powers delegated to it by law;
- ensures the execution of decisions of higher authorities;
- ensures publication and enforcement of laws;
- takes extraordinary measures that, in his view, are important in various fields of activity;
- provides public safety;
- has the right to take coercive measures and to require it from the armed forces.

The prefect is subordinate to the Minister of the Interior and obeys his instructions (Baty, 2003). Centralized management and unified decision-making throughout Italy served as a boon for the Italian North and allowed the central government to use the South’s resources to develop the industrial North. The Constitution of Italy after its unification in 1861 became the Piedmont Statute, adopted at March 4, 1848 by Carl Albert, and will remain in force until 1947. It was striking a symbolic, rigid constitution, fixing Parliament’s limited powers. The statute provided citizens with equality before the law and gave them limited freedom of assembly and the free press, but less than 3% of the population had the right to vote. The statute enshrined the existence of three classic branches of power: the executive (represented by the king), the legislative (divided between the Senate appointed by the king and the elected House of Deputies) and the judiciary (judges also appointed by the king). Initially, the king had the broadest powers: he controlled foreign policy and had the prerogative of nominating and dismissing ministers of state (Shemshuchenko, 2002; Baty, 2003).

According to the Law of 1865, the Italian prefect had the authority of general administration and provided security and public order in the region, as did his French counterpart. He was the executive officer of the regional council and its chairman at the same time. Although after the change of national legislation in 1889, these positions (prefect and chairman of the

regional council) were separated. In modern Italy, the Council of Ministers appoints commissioners to the regions and prefects in the province. Prefects exercise only control and oversight functions in relation to local self-government bodies, that is, by implementing “administrative custody” they do not deprive them of the sense of the owner of the respective territory (Padalko, 2012).

As mentioned above, the municipal system of Italy belongs to the so-called French type: as in France, in all territorial units of Italy there are representatives of the central government. In the region these functions are performed by a government commissioner who reports directly to the Prime Minister. In the provinces representatives of the central government are prefects who are part of the Ministry of the Interior. Prefects are primarily responsible for public order and security. In the communes the function of the representative of the central government is vested in the mayor, who, although elected by the population of the commune, necessarily takes the oath of the prefect as a representative of the state. The mayor is not only obliged to inform the prefect of the province about the state of public order in his territory, but also keeps a register of civil acts, registers voters, the military etc. (Melvyl, 2007).

In Italy, there is a so-called government vertical, where the prefects do not assume all the functions of the state leadership in the exercise of functions in relation to local governments (Shelepnytska, 2009). According to the results of V.A. Panov’s research, “provinces also have territorial bodies of state power, for which the province is the lowest level in the system of administrative and territorial structure. These include the prefect and the prefecture headed by him” (Panov, 2015). That means, that the prefect represents the central government of Italy, as well as oversees compliance with laws by local governments and coordinates the activities of territorial bodies of state power (Slobodian, 2016).

Based on our research, taking into account the historical and legal aspect of the development of the prefect institute in the countries of the European Union, we can conclude that during the whole period of existence of the prefect institute, their functions and powers have changed dramatically, along with that their influx on state formation has also changed. Taking the Roman Empire as an example, France was able to build an optimal model of territorial organization of power, which today serves as an example for many countries in the world. Speaking of Italy, unfortunately it could not achieve such a perfect model as in France, and therefore became a quasi-unitary state. In our opinion, it will be appropriate to use the French experience in Ukraine, it will be quite useful in expanding the powers of local self-government bodies and in the introduction of a prefect institute in Ukraine.

The legislative basis for this reform to radically change the system of government and its territorial base at all levels began to emerge in 2014 (Panov, 2015). Thus, at the Cabinet of Ministers meeting in April 2014, the Concept of reforming local self-government and territorial organization of government was approved and the Action Plan for its implementation (2014) was approved. It envisaged the urgent amendment of the Constitution of Ukraine, as well as the adoption of a number of new laws. Analyzing the domestic legislation, we can say that such a mechanism is the most appropriate for the introduction of a new instrument of public administration as an institute of prefect, which, in our opinion, is urgently needed by Ukraine for the effective development of the state as a whole. Thus, V. Yevtushok (2016) argues that the position of prefect in Ukraine must maintain a balance between the branches of power, and decentralization in this case will not lead to uncontrolled country.

According to Y. Slobodian, completely “transplanting” the successful French model of this institute into the Ukrainian soil will not succeed due to the lack of traditions of institutional discipline. The method for assigning and dismissing prefects and transferring to another position must be carefully worked out. For the introduction of the institute of prefecture in our country it is necessary to do it at the legislative level, by issuing a special law, which clearly differentiates this position from other state officials. In order to be effective, the prefect needs to be independent of the local political elites, not changed because of the replacement of the President or the Government, selected by open competition, as well as guided by such principles as the rule of law, openness, legality, unity of law, continuity, control, efficiency and political impartiality (Slobodian, 2016).

The first attempt to introduce a prefect institute in Ukraine was made in 2015 by drafting a bill “On Amendments to the Constitution of Ukraine (on decentralization of power)” (2015) and a draft law “On Prefects” (2015). These bills are based on European experience, in particular on the experience of France. Indeed, this country in its own example is important to Ukraine because, in pursuing decentralization, France retains its unitarity. It also struck a balance between the delegation of powers to local governments and prefect control (Yevtushok, 2016). According to these bills, the prefect’s power, unlike the heads of local state administrations, is to supervise the observance of the Constitution and laws of Ukraine by local self-government bodies and to ensure the implementation of state programs. They will not have the authority to prepare and implement relevant regional and district budgets and to report on the implementation of relevant budgets and programs. It is also positive that the prefect is rotated every 3 years, so there will be no interaction of state representatives with local elites, as well as “family ties” locally, as it was in state administrations.

However, for political reasons these laws were not adopted. The new Ukrainian government represented by the President of Ukraine V.O. Zelenskyi has already submitted to the Verkhovna Rada of Ukraine the Bill No. 2598 (2019), which amends the sections of the Constitution concerning the administrative-territorial structure, activities of local state administrations and bodies of local self-government. Speaking about prefects, President of Ukraine Volodymyr Zelenskyi, like his predecessor, proposes to liquidate local state administrations, but unlike P.O. Poroshenko, he proposes to transfer the executive power in the regions to the territorial bodies of central executive bodies and executive committees of local councils, while the prefects will only coordinate their work and be able to issue binding acts. On the basis of these powers, the prefect may remove the mayor or the chairman of a local council from office, if he / she recognizes the decision of the local authority as not in conformity with the Constitution. At the time of reviewing the decision of the local government body in the Constitutional Court, the President appoints a state official instead of a dismissed official. At the same time, the norm according to which regional councils could dismiss a head of a regional state administration, expressing the distrust to him/her, is proposed to be removed from the Constitution (Neimyrrok, 2019).

The experience of reforming the public administration system of France and Italy as a consequence of the country's evolution in the process of decentralization is important for Ukraine, as it shows the need to reorganize the public administration system at the local level (Vorona, 2015). Nevertheless, while supporting the introduction of prefects as a European practicum, it should be noted that, unfortunately, the main focus of today's reformers is on the organization of territorial communities, their numbers, the corresponding administrative-territorial division, that is, visible external attributes. Qualitative moments, inherent in the prefect as a carrier of reforms, to the statesman – his/her worldview, moral and ethical characteristics, state-building, socio-patriotic values and integration orientations – remain out of the focus of science. It seems that this is a minor problem (Vovkanych, 2016).

In carrying out our research, we have come to the conclusion that the mechanism of centralized state administration in which the institute of local state administrations operates in Ukraine does not cope with its responsibilities and has completely lost the trust of the community. Local state administrations limit the ability of communities to manage their own resources, land, finances, etc., and take responsibility for their own territory. The solution to this systemic problem is the reform of decentralization of power and its main component is the introduction of a prefect institute.

Examining the development of such a mechanism of public administration and taking into account the experience of France and Italy,

we can assert that the most effective institute of prefects is functioning in these countries. After analyzing the mistakes of these countries, during the reform and decentralization of power, Ukraine will be able to create its own Ukrainian model of government, taking into account our mentality and historical features.

According to French professor Jean Fabre: “Prefects can be compared to camcorders on the road, which detect traffic violations – one in thousands. But if you take away these camcorders, the number of violations will increase tenfold. So if we had no prefect, France would have come to an end”, we can understand what an integral role the prefect plays in the state. Therefore, the Ukrainian prefect should not become a controller, but an observer from the state for the life and development of the territorial community.

Since the beginning of the reform on decentralization of power in Ukraine, both supporters and opposition have appeared in the idea of introducing a prefect institute. Many are afraid to introduce these changes, justifying the fact that the prefect may have such powers that allow us to usurp power in the field. The question is how? The Ukrainian prefect, unlike the French prefect, will have no authority to administer state executive bodies on the ground and to dispose of local budgets. Its main purpose will be to control the legality of local government activities and to coordinate the activities of public authorities in the regions.

If you compare the heads of regional and district state administrations with prefects, it can be argued that the more transparent and effective will be the institute of prefects. First, the prefect is a civil servant and does not belong to political office. This will ensure the neutrality and sustainability of the state in resolving local disputes of citizens, thereby contributing to confidence building. Second, the prefect, unlike the chairman of the regional and district state administrations, rotates every 3 years and does not change with the expiration of the term of office of the president. Thirdly, it oversees the constitutionality of decisions of local governments by going to court. Only the court can revoke or enforce these decisions.

Conclusions

In carrying out the research, we outlined the main tasks on the way to the introduction of the prefect institute in Ukraine and developed our administrative and legal mechanism for carrying out this reform. The first step to decentralization of power is the adoption of amendments to the Constitution of Ukraine. They will become the constitutional basis for all subsequent actions. It is with the introduction of amendments to the Constitution that the process of development of relevant normative-legal

acts on the formation of executive bodies of regional and district councils and introduction of the institute of prefect will begin.

The second step should be the adoption of a special law “On Prefects” by the Verkhovna Rada of Ukraine, which will allow to control operatively the lawfulness of decision-making by local self-government bodies, to strengthen coordination of the implementation of state programs, to ensure prompt elimination of emergency situations. In order to perform these functions as effectively as possible, the prefect should be vested with the following powers:

control of legality (the prefect promptly checks all acts of local authorities, for compliance with Ukrainian law, if a violation is found, he / she suspends the acts and sends a lawsuit to the court or to the central executive authorities);

coordination of state programs at the level of the relevant territorial community (the prefect coordinates the actions of the executive authorities, monitors the implementation and appoints the head of inter-branch programs);

emergency powers (in the event of an emergency, the prefect has additional obligations, namely he / she becomes responsible for overcoming the effects of the disaster, and in the event of a military situation for the safety of civilians).

In fact, the prefect’s institute will serve as an observer, and it is better to call it the supervisor about the activities of the territorial community and become a state guard in case of violation of the law. The third, most important step is the elimination of regional and district state administrations that reduce community involvement in government, and the creation of an effective executive body that will be controlled by the territorial community through elected councils of the appropriate level. At this stage, all functions of managing the territorial community and its development are transferred to the executive bodies of the district (oblast) councils individually. Accordingly, it is necessary to develop and amend the Law of Ukraine “On Local Self-Government Bodies” regarding the definition of the legal status of these executive bodies. To develop their structure, it is needed to clearly define: functions, powers, rights and procedures of interaction with the relevant Councils, the Prefect’s Office and the central executive authorities. Particular attention should be paid to controlling the territorial community over the work of these executive bodies.

Summarizing the above, we can conclude that the citizens of modern Ukraine need to replace the inefficient Soviet mechanisms of centralized state governance with new ones – in which the citizen of Ukraine and its needs will play a major role. In our opinion, it is the French model of state governance that is the most effective, and the prefect institute as a

mechanism for governing the state needs Ukraine. Its introduction will have a positive impact on the development of the country, as evidenced by the European experience. The prefects will become representatives of the state, which will interfere with the activities of the territorial community only in case of a clear violation of the norms of the Ukrainian legislation.

They will become the “eye” of the central state power in the region and will be able to ensure the interaction of local self-government bodies and the center, thus contributing to the effective fulfillment of the tasks and functions of the state. Thanks only to the oversight function, and not entrusted with the formation and implementation of the state budget, they will monitor the possible theft of state and local budgets in the region and will become a barrier to minimize the risks of misuse. The rotation provided by law will ensure the transparency of the prefect institute, reduce the number of “corruption schemes” in the state. The state in the form of prefects will have an effective mechanism for preserving the unitarity, ensuring the territorial integrity and independence of Ukraine, its sovereignty, protection of the rights and freedom of citizens.

Therefore, many things need to be changed in order to implement the reforms, and this depends not only on the authorities, but also directly on us citizens of Ukraine. As the experience of developed countries shows, to carry out such reforms is possible, but it takes time for dreams to become a reality.

Bibliographic References

- ANDRIICHUK, Yuriy. 2019. “Reforming the system of local self-government and territorial organization of government in Ukraine: organizational and legal support” In: Petro Gural, Oleh Sushinsky (Eds.). *Decentralization of Public Power in Ukraine: Achievements, Challenges and Prospects: Proceedings of the All-Ukrainian Scientific and Practical Conference on International Participation*. March 15, 2019, Lviv. Lviv: LRIDA NADU, pp. 5-9.
- BAIRAK, Serhii. 2013. “Local self-government is the basis for the development of a democratic state” In: *Panorama of Political Science Studios*. No. 10, pp. 148-154.
- BATYR, Katerina. 2003. *History of the state and law of foreign countries*. TK Velby. Moscow, Russia.

- CABINET OF MINISTERS OF UKRAINE. 2014. Order No. 333-p “On Approving the Concept of Reforming Local Self-Government and Territorial Organization of Government in Ukraine”. Available online. In: https://zakon.rada.gov.UA/LAWS/SHOW/333-2014-%D1%80_. Consulted: 29/01/2020.
- DECLARATION OF STATE SOVEREIGNTY OF UKRAINE. 1990. Available online. In: https://zakon.rada.gov.UA/LAWS/SHOW/55-12_. Consulted: 29/01/2020.
- DUDKINA, Anna. 2013. “Problems of interaction between local state administrations and local governments in Ukraine” In: Bulletin of Kharkiv Regional Institute of Public Administration. No. 4, pp. 5-18.
- HANUSHCHAK, Yurii; CHYPENKO, Iryna. 2015. Prefects: French lessons for Ukraine. Kyiv, Ukraine: IKT “Legal Status”. 44 p.
- HARUST, Yuriy; MELNYK, Vadym; KIIASHKO, Yurii; HALUNKO, Vira. 2019A. “Economic crime, innovative mechanisms of counteraction by law enforcement agencies” In: Asia Life Sciences. No. 2, pp. 145-162.
- HARUST, Yuriy; ZAGORSKA, Daria; VASHCHENKO, Svitlana; MOSKALENKO, Serhii 2019B. “Problems of construction of the financial system of the state: organizational and legal aspects” In: Asia Life Sciences. No. 2, pp. 63-69.
- HROBOVA, Vira. 2015. “The local government system in France: experience for Ukraine” In: Uzhgorod National University Scientific Bulletin. Vol. 32, No. 1, pp. 108-112.
- KETTL, Donald. 2015. The transformation of governance, public administration for the twenty-first century. Johns Hopkins University Press. Baltimor, USA.
- KOVASIUK, Yurii. 2010. The French government: experience for Ukraine. NADU. Kyiv, Ukraine.
- LAS CASES, Emmanuele. 2010. St. Helena Memorial, or Memoirs of Emperor Napoleon. Zakharov. Moscow, Russia.
- LAW OF UKRAINE. 1999. On Local State Administrations. Available online. In: <https://zakon.rada.gov.UA/LAWS/SHOW/586-14>. Consulted: 29/01/2020.
- LAW OF UKRAINE. 2015. On voluntary association of territorial communities. Available online. In: <https://zakon.rada.gov.UA/LAWS/SHOW/157-19>. Consulted: 29/01/2020.

- MARTSELIAK, Olha. 2015. "The Prefect Institute in France as an example for Ukraine" In: Scientific Bulletin of Uzhgorod National University. No. 35, pp. 113-117.
- MELVYL, Anatoliy. 2007. The political atlas of modernity: The experience of multivariate statistical analysis of the political systems of modern states. MGIMO University. Moscow, Russia.
- NEIMYROK, Dmytro. 2019. Prefects and special status for any area. The main thing about the Zelenskiy decentralization project. Available online. In: <https://gordonua.com/ukr/publications/-prefekti-i-osoblivij-status-dlja-bud-jakoji-oblasti-golovne-pro-proekt-detsentralizatsijzelensko601479592.html>. Consulted: 29/01/2020.
- PADALCO, Hryhorii. 2012. Centralization and decentralization in the organization of service in local self-government bodies: municipal-legal aspect. V.M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine. Kyiv, Ukraine.
- PANOV, Andrii. 2015. The territorial structure of France and Italy are lessons for Ukraine. PP "AUTDOR-SHARK". Uzhhorod, Ukraine.
- PCHELINA, Oksana; SEZONOV, Viktor; MYRHOROD-KARPOVA, Valeriia; ZHEROBKINA, Yevheniia. 2019. "Administrative and legal mechanism of execution of decisions of the European Court of Human Rights as the basis of case law application in the judicial system of Ukraine" In: Asia life Sciences. No. 2, pp. 34-49.
- RUSNAK, Borys. 2017. Does Ukraine need a prefect and with what status? Available online. In: <https://www.bukinfo.com.ua/blogs/show?LID=118122>. Consulted: 29/01/2020.
- SEMENUKHA, Roman. 2014. Prefecture as the end of decentralization. Available online. In: https://ukr.lb.ua/blog/roman_semenukha/323241_prefektura_yak_kinets.htm. Consulted: 29/01/2020.
- SHELEPNYTSKA, Inna. 2009. Experience in establishing a local government system in the Republic of Italy and adapting it to Ukraine. YurLit. Kyiv, Ukraine.
- SHEMSHUCHENKO, Yana. 2002. Legal Encyclopedia. Ukrainian Encyclopedia M.P. Bazhan. Kyiv, Ukraine.
- SIRYK, Zakhar. 2015. "Administrative-territorial structure of France: current experience for Ukraine" In: Regional Economy. No. 3, pp. 116-124.

- SLOBODIAN, Yevhen. 2016. "Institute of prefect: foreign experience and prospects for implementation in Ukraine" In: Bulletin of the Student Scientific Society of DonNU Vasył Stus. No. 3, pp. 18-26.
- SYROID, Tetiana; KOLOMIETS, Yuriy; KLIUIEV, Oleksandr; MYRHOROD-KARPOVA, Valeriia. 2019. "International financial institutions as subjects of the financial system of the state" In: Asia Life Sciences. No. 2, pp. 74-82.
- THE BILL NO. 2217A. 2015. On Amendments to the Constitution of Ukraine (on Decentralization of Power). Available online. In: http://w1.c1.rada.gov.ua/PLS/ZWEB2/WEBPROC4_1?PF3511=55812. Consulted: 29/01/2020.
- THE BILL NO. 2598. 2019. On Amendments to the Constitution of Ukraine (on decentralization of power). Available online. In: http://w1.c1.rada.gov.ua/PLS/ZWEB2/WEBPROC4_1?pf3511=67644. Consulted: 29/01/2020.
- THE BILL. 2015. On prefects. Available online. In: http://search.ligazakon.ua/L_DOC2.NSF/LINK1/JI00952A.html. Consulted: 29/01/2020.
- THE ORDER OF THE CABINET OF MINISTERS OF UKRAINE. 2014. On the concept of reforming the concept of self-determination of territorial authority in Ukraine. Available online. In: <https://zakon.rada.gov.ua/LAWS/SHOW/333-2014-%D1%80>. Consulted: 29/01/2020.
- VORONA, Petr. 2015. "Introducing prefectures as a necessary condition for local government reform" In: State Building. No. 2, pp. 63-75.
- VORONA, Petr. 2017. Features of local self-government in France as an example of regional administrative-territorial units – departments: experience for Ukraine. Available online. In: <http://www.kbuapa.kharkov.ua/e-book/DB/2008-2/DOC/5/13.pdf>. Consulted: 29/01/2020.
- VOVKANYCH, Svitlana. 2016. "Prefects in the system of decentralization of power: new institute, modern institution (organization), or development in Ukraine of neoinstitutionalism?" In: Regional Economy. No. 2, pp. 18-33.
- YANIUK, Nina. 2015. "Reforming local state administrations in the context of decentralization of power in Ukraine" In: Bulletin of Lviv Polytechnic National University. Law. No. 827, pp. 30-35.
- YEVTUSHOK, Vira. 2016. The Prefect Institute in the context of decentralization as a form of sustainable development strategy. Available online. In: <http://www.kbuapa.kharkov.ua/e-book/conf/2016-5/DOC/2/14.pdf>. Consulted: 29/01/2020.



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