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CONTENTS

PROBLEMS AND WAYS TO IMPROVE LEGISLATIVE PROCESS AND LAW ENFORCEMENT IN THE REPUBLIC OF AZERBAIJAN: FOREIGN EXPERIENCE FOR UKRAINE.....	6
<i>Abdullazada Furgan</i>	
CHINA AND THE RUSSIA-UKRAINE WAR: INTERESTS, POSITION, CONSEQUENCES.....	12
<i>Stanislav But</i>	
LE PRINCIPE DE CARACTÈRE RAISONNABLE DES DÉCISIONS JUDICIAIRES COMME NORME D'UNE PROCEDURE JUDICIAIRE ÉQUITABLE.....	23
<i>Laura Bzova, Oleksandre Savka</i>	
THE PRINCIPLE OF HUMANISM AND ITS CONTENT IN THE CONDITIONS OF THE FORMATION OF THE NEWEST SOCIAL PARADIGM.....	30
<i>Myroslava Byelova, Ioan-Mircea Farcash, Dmytro Byelov</i>	
THE EVOLUTION OF ENERGY WEAPONS: FROM THE MIDDLE-EAST CRISES TO THE RUSSIAN-UKRAINIAN WAR.....	43
<i>Vadym Danylets</i>	
EFFECTS OF PERSONAL INCOME TAX: THEORETICAL ASPECT.....	50
<i>Helen Dibrova</i>	
THE MONSTER AS A HUMAN IN THE NOVEL “THE MINOTAUR TAKES A CIGARETTE BREAK” BY STEVEN SHERRILL.....	59
<i>Andriy Gurduz</i>	
THE CERTAINTY OF JUSTICE IN UKRAINE AS THE MAIN FACTOR OF FAIR LAW ENFORCEMENT.....	67
<i>Petro Guyvan</i>	
DEVELOPMENT OF THE KYIV CITY COUNCIL STRUCTURE.....	76
<i>T.Havrylenko</i>	
LINGUAL ENVIRONMENT OF NATIONAL MINORITIES IN TRANSCARPATHIA: SOCIO-COMMUNICATIVE ELEMENTS OF DESIGN.....	81
<i>Lesia Hychko</i>	

THE HUNGARIAN REVISIONISM ON THE EVE OF WORLD WAR II IN UKRAINIAN HISTORIOGRAPHY.....	89
<i>Myroslav Ihnatolia</i>	
WHAT IS FAIR TAXATION IN THE GAS MARKET: THEORETICAL VIEW FROM THE LAW & ECONOMICS PARADIGM.....	102
<i>Viktor Karvatsky</i>	
PLANNING OF LEGISLATIVE ACTIVITY AS THE BASIS OF THE EFFECTIVE WORK OF PARLIAMENT: UKRAINIAN EXAMPLE.....	111
<i>Oksana Kohut</i>	
MAN IN THE CONDITIONS OF DIGITAL CIVILIZATION: COGNITIVE-ETHICAL PERSPECTIVE.....	117
<i>Mykola Kozlovets, Danylo Samoilenko, Liudmyla Horokhova, Tetiana Hlushko</i>	
THE RIGHT TO APPEAL IN THE SYSTEM OF GUARANTIES OF THE IMPLEMENTATION AND THE PROTECTION OF THE ADMINISTRATIVE AND LEGAL STATUS OF A PRIVATE PERSON IN THE PUBLIC SPHERE.....	127
<i>Sergiy Kostyukevich</i>	
CONSTITUTIONAL PRINCIPLES AND PRACTICE OF DECENTRALIZATION REFORM IMPLEMENTATION IN FRANCE, PORTUGAL AND POLAND.....	134
<i>Hanna Lavrynenko, Constantin-Vasile ȚOCA, Florentina Chirodea</i>	
SOME ISSUES CONCERNING THE PROTECTION OF SOCIAL AND ECONOMIC RIGHTS OF PERSONS WHO ARE SERVING SENTENCES IN THE FIELD OF EXECUTION OF PUNISHMENT OF UKRAINE.....	144
<i>Yaroslav Likhovitsky</i>	
METHODOLOGICAL PRINCIPLES OF MODERN SCIENTIFIC KNOWLEDGE OF THEORETICAL LEGAL ASPECTS OF THE MECHANISM OF NOTARY ACTIVITY.....	153
<i>Alina Marzhyna</i>	
CULTURAL TRADITION AS BASIS AND POTENTIAL FOR THE CIVILIZATIONAL DEVELOPMENT.....	160
<i>Kateryna Matvieieva</i>	

CONSTITUTIONAL PRINCIPLES AND PRACTICE OF DECENTRALIZATION REFORM IMPLEMENTATION IN FRANCE, PORTUGAL AND POLAND

Lavrynenko Hanna¹

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Annotation. The article is devoted to the analysis of the constitutional principles and practice of the decentralization reform's implementation in states that are members of EU. For the study purposes France, Portugal and Poland were chosen as EU countries that are part of the group of unitary states that are at the stage of implementing reform of decentralization. However, it is noted that each of them has different results of the decentralization policy's implementation at present. It was determined that, regardless of the effectiveness of the manifestations, decentralization in EU countries is based on shared ideas and values. At the same time, it is established by the authors that the nature of the decentralization process reflects the national characteristics of each state provided for by the legislation of countries in EU. However, it is noted that in the constitutions of EU member states, decentralization of power is secured as the basis of the constitutional order. It is emphasized that each of the analyzed states has secured strategic issues of state's power decentralization in its law, and supplementing the existing legislation with additional legal acts related to the decentralization process contributes to more effective implementation of its key provisions in practice. It is accentuated that the nature of constitutional consolidation's manifestations of the decentralization process was influenced by the legal tradition, national-historical features, the past experience of public author-

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ities' functioning and features of the administrative-territorial organization of states. The processes that are universal for the decentralization policy in the EU member states and that influenced the development of local government in them are identified. The multidimensionality of the decentralization process is emphasized. The characteristic features of political, administrative and fiscal decentralization are specified. The practical aspects of the decentralization reform in France, Portugal and Poland were analyzed using the Decentralization Index, developed by the European Committee of the Regions as part of the analysis of the separation of powers. It was established that the specified measurements of decentralization in each studied country develop asymmetrically, universal factors are the reluctance of central state authorities to transfer part of their powers to local authorities, the desire to maintain influence on the regional level of government, financial limitations of local budgets and the lack of independence in matters of making decisions by local government.

Key words: decentralization, local government, universalism, constitution, measurements of decentralization, index of decentralization, unitary state.

Formulating the problem. The process of decentralization, as a universal public phenomenon, is being actively developed in European countries. This applies to both federal and unitary states. In the process of state power's decentralization, relations between regional and local governing bodies and the state government are gradually becoming stonger. Although these manifestations do not have linear signs, since decentralization is unevenly manifested in its various measurements in EU member states, it is always based on values and ideas shared by all EU countries – civilian participation, governmental and population's closeness to each other, principles of local government [20]. Given that the decentralization of state power is determined by the division of public power taking into account its systemic unity, national peculiarities in matters of the state system's form and the legal tradition that has developed over a certain historical period, it is considered relevant to look upon general and unique features of the constitutional consolidation of norms of the distribution of state power, as well as their practical implementation taking form of implementing the decentralization reform in the EU member states.

The purpose of the research is to carry out a comprehensive political analysis of the constitutional principles and practice of implementing the decentralization reform in EU member states (France, Portugal and Poland).

The following researchers paid attention to investigation of separate aspects of European countries' experience in decentralization as T. Bartley, J.M. Cohen, G. Lovatcharin, S.B. Peterson, J.I. Stollmann, V.B. Averyanov, N.T. Honcharuk, V.S. Kuybida, N.R. Nyzhnyk, T.V. Steshenko. However, most of their works were devoted to the study of each specific dimension of decentralization, as well as the legal regulation of decentralization norms. At the time, a systemic view of the problems of the decentralization reform implementation requires deepening of further research by scientists.

Presentation of the main research material. In modern conditions, decentralization is considered to be a multi-vector process of transferring powers in the political, administrative and economic spheres to the regional and local levels. Besides that, the degree and form of decentralization is determined in proportion to the distribution of the balance of forces and resources in the center-region format [3, P. 198].

The term “decentralization” as the antithesis of “centralization” began to be used in the first half of the 19th century. by European political figures, including Alexis de Tocqueville, when he characterized the Great French Revolution as a desire for decentralization of the state administration system [16, P.10]. Precisely why it seems quite natural that the process of decentralization of power began to be embodied in politics and became widespread, first of all, among European states.

It should be taken into account that the legislation of the EU countries allows for each state’ own national characteristics, this leaves an imprint on the decentralization process. Since the beginning of the second half of the 20th century the decentralization of power was secured as the basis of the constitutional system in the constitutions of EU member states [17, P. 34]. This also applies to the constitutions of the EU member countries that were chosen for analysis, namely France, Portugal and Poland. Choosing these states is not accidental. From the point of view of orientation towards regional separations in the state itself and the creation of certain autonomies at the regional level, France, Portugal and Poland belong to the same group – unitary countries that are at the stage of the decentralization reform’s implementation. Poland has the most successful result, Portugal, on the contrary, was overtaken by stagnation in the process of decentralization, and France occupies an intermediate position among the states of this group, which are at the stage of implementing the decentralization policy [22].

So, the Declaration of the Rights and Freedoms of Man and of the Citizen, which was adopted by a resolution of the French National Assembly on August 26, 1789 and is part of the Constitutional Acts of the French Republic, secures the separation of powers in the state. Article 16 of the Declaration notes that if there is no separation of powers in society, then it does not have a Constitution [11, P. 10].

Another example is Portugal. In part 1 of article 111 of the Political Constitution of the Portuguese Republic, dated April 2, 1976, defines the principle of separation of powers and interdependence of state authorities [2]. Independence of the authorities from various functional branches is secured owing to it. And a dialectical connection can be traced between centralization and decentralization in this form. Moreover, another important principle is stated in part 3 of the same article, which defines the limits and conditions of decentralization of power according to the order of delegation. It is noted that only in cases foretold by law and the Constitution, state and local government bodies, as well as autonomous regions can delegate their own powers to other government bodies. In all other cases, these actions are prohibited [2].

In Poland, as a state member of the EU, the principle of separation of powers is contained in part 1 of article 10 of the Constitution, which secures that the

state system of the Republic of Poland is based on the principle of distribution and balance of three branches of power: legislative, executive and judicial. And the state provides organizational support for the implementation of this principle [9, P. 5].

From the examples above, it can be seen that each of the states in varying degrees, ranging from mentioning some elements to dense detail, has secured strategic issues of state's power decentralization in its law. At the same time, the diversity of presentation and sometimes the vagueness of the existing decentralization criteria, which are specified in the constitutional acts, in no way indicate the superficiality or denial of this process in general [12, P. 36]. Supplementing the existing legislation with additional normative legal acts in matters of implementing the decentralization process helps to practically realize its key principles and to concentrate state power around socially significant issues [13, P. 308].

As for the distribution of powers between state and local authorities, in the countries selected for analysis, decentralization according to the vertical principle is widespread, characterized by the expediency of moving individual state powers from the national level to the regional or local level. Such changes are confirmed by the constitutional backing of the state's exclusive powers on certain priority issues within the framework of entire country [19, P. 23]. And organizational moments are accompanied by the actions of legislative and executive bodies, whose capacity includes the solution of one or the other problematic issue [10, P. 141].

For example, Chapter 12 of the French Constitution lists the territorial unions that can receive capacities transferred by the state for solving local issues. Among them, regions, departments, municipalities, unions with a special status are distinguished [7]. It is important that the transfer of any capacity from the state to the territorial union also includes granting appropriate resources and means necessary for the implementation of the specified capacity.

In the Constitution of Portugal, the state power is distributed on several levels, which is recorded and detailed and organized in Chapter 7 "Autonomous regions" and Chapter 8 "Organization of local authorities" [21]. The powers of the autonomous regions, according to which they can make decisions that have legal significance, are regulated by two articles. Article 227 regulates the standard powers of autonomous regions, and article 228 – powers of autonomous regions with heightened government significance. The first group of powers includes both issues of exclusive and residual competence. Moreover, attention is focused on the need to accompany proposals of law bills on the transferring powers with bills of regional legislative decrees regulating power relations, in particular during the transferring part of the powers to localities [14, P. 499]. The second group of powers regulates issues determining the administrative and legislative autonomy of regions [15, P. 11]. The list of these issues remains quite broad and is not exhaustive, as issues that regulate relations exclusively in one separate area or require an individual approach to resolution may be added to it [2].

As for Poland, its Constitution reflects the vertical decentralization of power by transferring part of the powers to territorial self-government and

local government administration bodies. As for the latter, you can see only a partial mention of them in article 184 and article 94 in the context of the competence and powers of the High Administrative Court and acts of local law, respectively [9, P. 48, 71]. The powers and tone of practices of territorial self-government bodies are described in sufficient detail in Chapter 7. Besides the possibility of transferring powers to representatives of territorial self-government to perform other public tasks under the conditions of this urgent need on the part of the state is substantiated [18, P. 12]. At the same time the tone of transferring and performing tasks assigned by central state authorities is regulated by law in accordance with part 2 of article 166 of the Constitution of Poland [9, P. 67].

So varied manifestations of the constitutional consolidation of the decentralization process by the way of clarifying powers and the process of transferring authority to localities in the EU countries is characterized by the influence of legal tradition, national-historical features, past experience of public authorities' functions and features of the administrative-territorial structure of states.

Analyzing the practical aspects of the decentralization reform, it should be noted that the development of local government in the EU member states, namely France, Portugal and Poland, was influenced by the following states' universal decentralization policy processes [1, P. 65]:

- increase in the democratization;
- expansion of territories' economic independence;
- formation of mutual relations between local self-government bodies and the community of territorial communities within the framework of the consumer-balanced model;
- deconcentration of public power;
- deepening the urbanization of territories.

Besides during the process of analyzing the practice of the decentralization reform implementation, it is necessary to take into account the multidimensionality of this process.

The first dimension is political decentralization. It is characterized by the presence of local electoral authorities, including advisory assemblies and executive bodies, the transfer of powers to make political decisions and their further implementation, the active involvement of citizens in the political life of the state, as well as the transparency and accountability of local government bodies [8, P. 168].

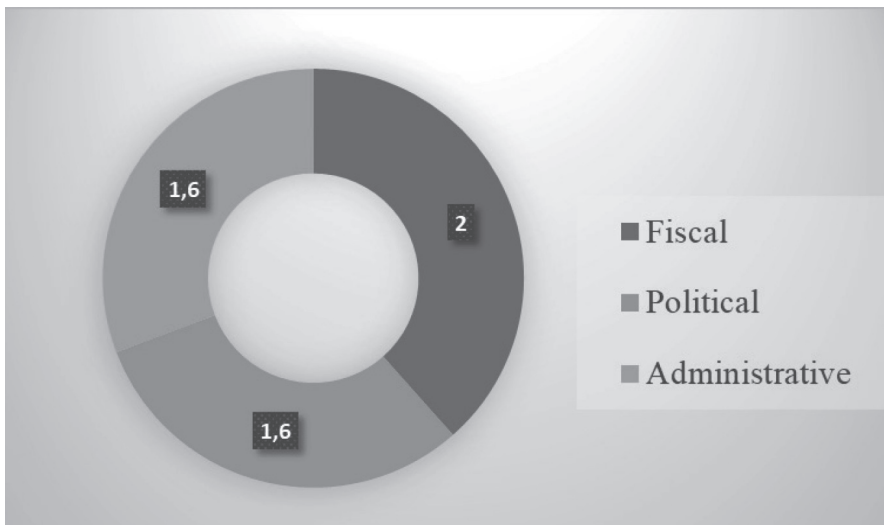
The second dimension is administrative decentralization, which covers general and exclusive responsibilities of local authorities, delegation of authority to perform regulatory, financial and reporting functions to the local level, formation of local personnel potential and accumulation of resources [18, P. 9].

The third dimension is fiscal decentralization. It is provided by the availability of the local budget, the ability to manage one's own expenses and income, sufficient purchasing power, income adequate for the needs of the territorial community, and fiscal rules [6, P. 330].

For a more detailed representation of degree of the decentralization reform's practical implementation in France, Portugal and Poland, it is advisable to refer to the Decentralization Index developed by the European Committee of the Regions as part of the analysis of the division of powers [5], which examines the levels of development of three dimensions of decentralization: political, administrative and fiscal. 27 EU member states are involved in the analysis. The calculation of points for each dimension of decentralization takes place on a scale from 0 to 3. Where 0 is the lowest indicator and 3 respectively is the highest.

So, France, being a unitary state, has 3 levels of subnational government: regions, departments and municipalities, where the latter are the lowest level of self-government. There are a total of 34968 local administrative units in France.

Figure 1. Evaluation of decentralization in France.

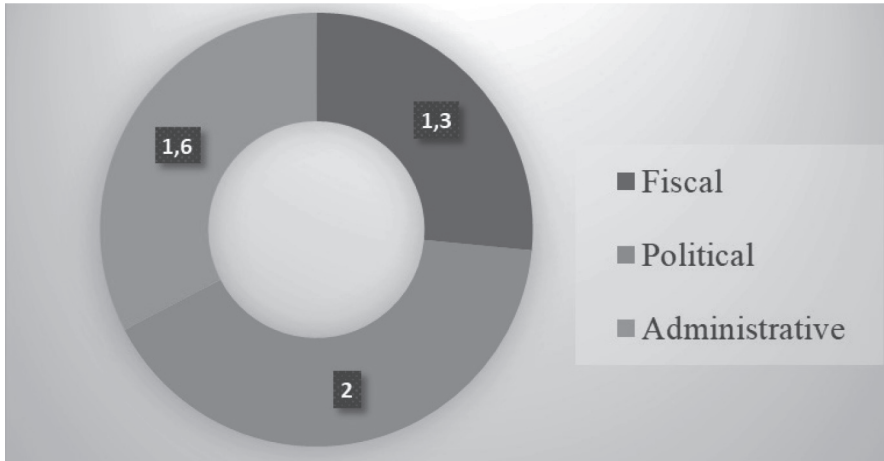


Source: Own author's work based on the data Decentralization Index. European Committee of the Regions [4].

According to the average calculation of the decentralization index, France has 1.7 points (Figure 1) and ranks 12th out of 27 EU member states [4]. The greatest progress in decentralization is observed in the fiscal dimension. While political and administrative still remain a problem area. The infighting of political elites to maintain influence on the regional level of power, the reluctance to transfer part of the powers to the localities, as well as open issues with the transparency of the activities of local government bodies inhibit the completion of the decentralization process in the state.

The next country is Portugal. It is also a unitary state, which includes 3 levels of subnational government in the form of regions, municipalities and parishes, where the latter is the lowest level of self-government. The total number of local administrative units in Portugal is 3092.

Figure 2. Evaluation of decentralization in Portugal.

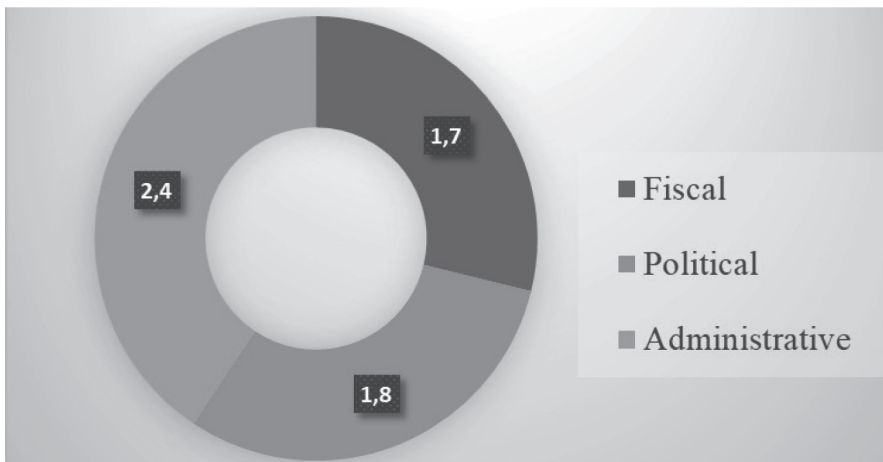


Source: Own author's work based on the data Decentralization Index. European Committee of the Regions [4].

The average score of the decentralization index in Portugal is 1.6 (Figure 2). It ranks 15th among 27 EU member states [4]. The greatest effectiveness is demonstrated by political decentralization. The administrative one is being constructed less successfully. However, the biggest concern is fiscal decentralization, which is tied with financial limitations of local budgets, insufficient independence in matters of their development, and insufficient matching of resources and community needs.

And the last among the analyzed countries is Poland. It is a unitary state with 3 levels of subnational government: voivodships, counties, communes. The commune is the lowest level of self-government. There are a total of 2477 local administrative units in Poland.

Figure 3. Evaluation of decentralization in Poland.



Source: Own author's work based on the data Decentralization Index. European Committee of the Regions [4].

In the ranking of 27 EU member states according to the decentralization index, Poland ranks 8th with an average calculated score of 1.9 (Figure 3) [4]. The administrative dimension of decentralization in Poland is at a sufficiently high level. However, the political and fiscal dimensions need further improvement, although they also show above-average indicators. Given the fact that Poland introduced a decentralized system of power much later compared to other EU member states, its achievements are more significant.

Conclusions. The European experience of constitutional consolidation of the decentralization's principles in the unitary states of the European Union, namely France, Portugal and Poland, demonstrates a certain symbiosis of legal traditions and national characteristics and related interpretations in the field of organizational parameters and the structure of authorities at all levels. The constitutions of the specified EU member states secure the models of state power distribution and the principle of power distribution with a clear constitutional differentiation of powers is determined on the basis of the institutional aspect. Different variations of state's power decentralization are also shown, that can be both situational and carried out on a permanent basis, with the presence or absence of functional limitations in certain local government bodies. The existing variety of constitutional aspects of state's power decentralization once again emphasizes the ability for further development of this phenomenon, its adaptive nature and the possibility of influencing the improvement of the efficiency of self-government processes.

The analysis of the practical aspects of the decentralization reform of the EU member states using the Decentralization Index, developed by the European Committee of the Regions as part of the analysis of the division of powers, showed that the three dimensions of decentralization (political, administrative and fiscal) in each of the studied countries develop asymmetrically. This is due to such universal factors as the reluctance of central state authorities to transfer part of their powers to local authorities, the desire to maintain influence on the regional level of government, the financial limitations of local budgets, the inconsistency of available resources with the needs of the community, and the lack of independence in matters of decision-making by local government bodies. Thus, in France, the greatest progress in decentralization is observed in the fiscal dimension, in Portugal – in the political dimension, and in Poland – in the administrative dimension, although here and in other dimensions of decentralization there is a noticeable efficiency in the functioning of state power and local government bodies.

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