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TRANSITIONAL MECHANISMS OF LOCAL SELF-GOVERNMENT IN THE MEMBER STATES OF THE EUROPEAN UNION

Abstract. The article aims to analyse the local autonomy in three groups of Member States of the European Union in transitional perspective. The examples of the Member States with experience and administrative tradition could inspire for concrete measures in strengthening local autonomy. At the same time, the states from the ex-socialist space represent a model in overcoming communist regimes and building the local layer and free organisation of the local public administration. In the same context, the particular development path of the Baltic countries become relevant. The experience of different categories of European countries highlights concrete lessons learned or valuable experience that can be treated as good examples for other countries in the region. The local autonomy development process in each country is influenced by certain factors, both internally and externally.

For a comprehensive view in research elaboration were applied several scientific methods. The juridical-legal perspective of the topic was ensured due to exploring of legislative, normative and methodological materials regulating local autonomy and local public administration in the analysed countries. Comparative method was useful in terms of analysing the same countries of a certain European groups, but also between different groups. The bibliographic analysis supposed studying foreign scientific literature and the domestic sources.

The actuality of the research topic relates to the importance of the local autonomy in the context of local development and the increasing significance of the local public administration. The European models and the lessons learned from their experience are absolutely relevant in the context of the transition systems in the region such as Eastern Partnership countries.

In conclusion, the simplicity of the local administrative system in terms of one layer of local administration, allows for a transparent and direct implementation of functional autonomy, as is the case of the Baltic countries. For ex-socialist states concrete reforms and fast measures had worked efficiently. The European countries with administrative tradition apply a hybrid style of local autonomy, regionalisation becoming an increasingly widespread practice.

Key words: local autonomy, European countries, local public administration, administrative principles.

ПЕРЕХІДНІ МЕХАНІЗМИ МІСЦЕВОЇ АВТОНОМІЇ В ДЕРЖАВАХ-ЧЛЕНАХ ЄВРОПЕЙСЬКОГО СОЮЗУ

Анотація. Метою статті є аналіз місцевої автономії трьох груп держав-членів Європейського Союзу в перехідній перспективі. Приклади держав-членів із досвідом та адміністративними традиціями могли б надихнути на конкретні заходи щодо зміцнення місцевої автономії. При цьому держави з ексоціалістичного простору є зразком подолання комуністичних режимів та розбудови місцевого шару та вільної організації місцевого державного управління. У цьому ж контексті актуальним стає особливий шлях розвитку країн Балтії. Досвід різних категорій європейських країн висвітлює конкретні здобуті уроки або цінний досвід, який можна розглядати як хороший приклад для інших країн регіону. На процес розвитку місцевої автономії в кожній країні впливають певні фактори, як внутрішні, так і зовнішні.

Для комплексного уявлення в розробці дослідження було застосовано декілька наукових методів. Юридично-правовий аспект теми забезпечено за рахунок вивчення законодавчих, нормативних та методичних матеріалів, що регулюють місцеву автономію та місцеве державне управління в аналізованих країнах. Порівняльний метод був корисним з точки зору аналізу одних і тих самих країн певних європейських груп, а також між різними групами. Бібліографічний аналіз передбачав вивчення зарубіжної наукової літератури та вітчизняних джерел.

Актуальність теми дослідження пов'язана зі значенням місцевої автономії в контексті місцевого розвитку та зростання значення місцевого державного управління. Європейські моделі та уроки з їхнього досвіду є абсолютно актуальними в контексті перехідних систем у регіоні, наприклад у країнах Східного партнерства.

У підсумку простота місцевої адміністративної системи в умовах одного рівня місцевого управління дозволяє прозора та безпосередньо реалізувати функціональну автономію, як у країнах Балтії. Для колишніх соціалістичних держав конкретні реформи та швидкі заходи спрацювали ефективно. Європейські країни з адміністративною традицією застосовують гібридний стиль місцевої автономії, регіоналізація стає все більш поширеною практикою.

Ключові слова: місцева автономія, європейські країни, місцеве державне управління, адміністративні принципи.

1. Introduction

Each state goes through a certain process of development having the administrative system as a backbone with the role of ensuring good governance. The European administrative space is a complex one and includes several types of administrative systems from the perspective of local autonomy. On the one hand there are the models of developed countries with a tradition in administrative culture, and on the other hand there are countries with a specific past and particular course of administrative development.

Local autonomy is a principle of democracy, working alongside true decentralization and subsidiarity. Therefore, local autonomy is found in particular in the developed societies, especially from the administrative point of view. An eloquent example for societies in transition such as the Republic of Moldova, Ukraine or Georgia, is the Member States of the European Union with a tradition of applying democratic principles. The unity of the member states of the European Union is in fact accompanied by the diversity of the administrative systems and the particularities of local autonomy development process in each state.

The actuality of the research topic relates to the importance of the local autonomy in the context of local development and the increasing significance of the local public administration. The European models and the lessons learned from their experience are absolutely relevant in the context of the transition systems in the region.

In order to study the topic from a juridical-legal perspective, a wide set of legislative, normative and methodological materials regulating local autonomy and local public administration in the analysed countries were explored.

In the same context, the analysis of the foreign specialized literature highlights that local autonomy is treated in a broadly view. American authors correlate the concept of local autonomy in the perspective of democracy – Hankla C. and approach the subject in an interdisciplinary sense, correlating it not only with decentralization and efficiency of public services as in Wolman H., but also with the economic, social, ecological as is the work of Ostrom. The ideas of Western researchers studying the typologies of local government systems start from the existence of an inter-relationship between the functions assigned to local government as

shown in the research of the British Gordon LC, Pratchett L. European authors analyse autonomy from the central-local administration relation – Laubadère A., Prelot M. including the allocation of resources – as shown in the works of Kleingeld P. and Willaschek M. and the performance of local authorities – Goldsmith M.

In the domestic Moldavian scientific literature there are an amount of researchers concerned with the issue of local autonomy. One of the promoters of administrative science in the Republic of Moldova, Platon M. places great emphasis on local autonomy, transparency and personnel policies in his work. The author Sîmboteanu A. deals with the transitory aspects of local autonomy in a series of articles. In general, local authors explore autonomy as a fundamental principle of the process of local administration along with decentralization – Popa V., Cornea S., Popovici A.

However, a comprehensive vision is needed to reflect the specific features of the reforms undertaken in the European countries, divided into three groups. The examples of the Member States with experience and administrative tradition could inspire for concrete measures in strengthening local autonomy. At the same time, the states from the ex-socialist space represent a model in overcoming communist regimes and building the local layer and free organisation of the local public administration. In the same context, the particular development path of the Baltic countries become relevant.

Having regard to the above, the aim of the article is to underline the challenges of ensuring the local autonomy in different categories and groups of countries within the European Union.

2. Experience of the Member States of the European Union in strengthening local self-government

The constitutional consecration of local autonomy determines the role and place of this principle in the entire administrative system of any state. In this sense, we note that there are three types of European states whose constitutions regulate local autonomy differently. In countries whose constitutions are older, this notion does not directly exist – e.g. Germany (1949), Belgium (1831), Denmark (1953), while the newer constitutions include the given terminology – e.g. Spain (1978), Greece (1975). And the third type of countries are those that regulate the concept of autonomy in domestic law, not in the constitution – e.g. France.

States that have historical, linguistic peculiarities of their constitution, attribute a certain system of autonomy. For example, the Italian Constitution, after enshrining the organization of the state

in regions, provinces and communes, recognizes, on the one hand, the quality of regions of autonomous bodies with their own particular powers and functions, and, on the other hand, assigns to Sardinia, Sicily, particular forms and conditions of autonomy in terms of special statutes.

In Italy, the organization of the state administration has a pyramidal structure, being largely French-inspired, with a uniform regime. Italy has a wide administrative decentralization in public services, since according to the constitutional text, the Republic is based on the principles of local administrative autonomy and on the maximum decentralization of the services provided by the state. Both the province and the commune are designed according to the principle of functional duplication, having in addition to the quality of local communities, with general competence and the quality of decentralization constituencies of the state and the region (Організація місцевого державного управління в Італії).

By regions there was intention to create a federalist regime in Italy, establishing an autonomy like the Swiss cantons, but in reality these regions are not member states in the federation, but are the maximum limit of a decentralization, an autonomy reconcilable with the unitary state system. The provinces exercise both specific attributions of local autonomy and attributions transferred by the state and the region. A special problem has been posed by the financial system since all authorities have only limited tax revenues and get most of their state revenues – a limitation of autonomy and decentralization. The 2001 constitutional revision widens the autonomy of the regions, and the application of the principle of subsidiarity, for the division of powers between the state and the region, is expressly provided for. Thus, according to the new content of art.118 of the Italian Constitution, subsidiarity acquires the value of a constitutional principle under two aspects: the higher level retains only the attributions that cannot be performed, in a satisfactory way, by the lower level; public authorities are only concerned with actions that cannot be carried out satisfactorily by the private sector.

In Spain there are two applicable legal regimes, distinguishing between communal autonomy, governed and administered by municipal councils and autonomous communities. The 1978 constitution guarantees the autonomy of the communes. They have full legal personality, their administration belonging to the municipal councils, composed of mayors and councillors. Moreover, art.113, point 1 recognizes to the limitrophe provinces having a historical regional identity, the possibility to self-gov-

ern, by constituting in Autonomous Communities. Municipalities represent the basic entities of the territorial organization of the state, the immediate cause of citizens' participation in public affairs, institutionalizing and autonomously managing the interests of their own communities (БАНТУШ-ГУРДУЗА, p.16)

With regard to the evolution of decentralization, the 1955 law regulated the local regime, when certain attributions were recognized to the authorities in the provinces and municipalities, but these were subject to strict control. The constitution enshrines local autonomy, but a decision was needed by the Constitutional Court, which, since 1981, abolished the guardianship regime provided by the 1955 law: local autonomy must be understood as the right of the local community to participate through its own bodies in defining and managing the affairs that concern it, adjusting the intensity of its action according to the ratio of local interest and supra-local interest. The Pact of Autonomies of 1992 extends the competence of the regional autonomous communities, in the same year, being adopted the law on the legal regime of public administration and common administrative procedures. Currently, there are 17 autonomous communities, 50 provinces, 8124 municipalities and two autonomous cities.

The subject of autonomy is a controversial one in Spain, which has limits, derived from the principle of unity. In this sense, we are talking about the limit of the general interest, since the regional and local interests coexist, within the autonomous entity, together with the national ones. Obviously, the limit of equality is also applicable, because it can be interpreted in the sense of standardizing the living conditions whose effect is attributed to the state in the form of an exclusive competence, this gives it the possibility to limit the intervention capacity of the community. Last but not least – the limit of the unity of the national economy, the division of competences between the state and the autonomous communities must not have the effect of malfunctioning or disintegration (БАНТУШ-ГУРДУЗА).

In the analysis of the two European states Italy and Spain, we can highlight some similarities. Being from the same group of states with a similar administrative profile – unitary-centralized with a relatively developed local administration, Italy and Spain have a variety of forms and bodies of inter-municipal cooperation. This practice demonstrates the close horizontal link between the authorities, in order to achieve common interests, but also a proof of increasing the competences and

interests of local authorities to solve their own problems. From the point of view of the name of the collectivities, we will observe a certain constant, in considering at the basic level, the commune, in order to differ only from the point of view of its size or importance. We also notice that the historical specificity, the local development traditions have individually influenced each European state, and the administrative system, respectively the local autonomy has evolved also according to these elements.

The situation in France is somewhat different, the 1958 Constitution does not directly apply the term local autonomy, and the local authorities are administered freely by councils elected under the conditions provided by law. French jurisprudence has ruled on the limits of local self-government, which is applied according to the need to maintain the unity of the country and to harmonize this principle with other constitutional principles governing civil rights, including the principle of continuity of executive activity. whenever the administrative measure is not permanent. From the perspective of financial autonomy, France is characterized by a low level of decentralization of public spending. Only 20% of this expenditure is paid by local and regional authorities, compared to an average of 31% in the European Union. The share of tax revenues is slightly higher than in other countries, and that of government transfers – slightly lower. Overall, although the decentralization of public spending appears to be low in France, the resources of local public authorities give them a degree of management autonomy that is not lower than that of other European countries. (6)

The examples provided allow us to observe the European constitutional context of the regulation of local autonomy, which results in the diversity of ways of conceiving local autonomy. This highlights two trends:

- 1) the preoccupation of the states to integrate the local autonomy in the more general context of the democratic principles, of the participation of the local communities in the affirmation of their own interests;

- 2) outlining the concept of local self-government in the last forty years, culminating in the adoption of the European Charter of Local Self-Government in Strasbourg in 1985. (7)

In the case of states with democracy and administrative tradition, there are, therefore, peculiarities regarding the local level to which local autonomy applies, represented mainly by communes, cities, municipalities, but also the presence of the regional level – the so-called hybrid system. Subnational

authorities have different levels, statutes, structures, competences and responsibilities throughout the European Union or even in the same Member State, varying from region to region.

3. The experiences of the ex-socialist states in terms of local autonomy

Of particular relevance are the experiences of the states in the ex-socialist space, which through development and democratization have become members of the European Union. Poland is a model of local autonomy in the region, being in the top of the European states with a high level of autonomy. In early March 1990, Poland secured a high degree of local autonomy and cultural competence through the Territorial Governance Act (Конституція Республіки Польща). Learning from his own experience of reforming the system in general, and the administrative system in particular, the decentralization process is one of the most successful aspects of the success story surrounding the Polish transition from the authoritarian communist regime to democracy.

Poland's history shows that in 1997, the new Constitution, strongly influenced by the European Charter of Local Self-Government, strengthened local government. Among the fundamental rules of the state and the political system, the Constitution mentions both decentralization and the delegation of local and regional communities represented by autonomous institutions, in order to carry out a substantial part of public tasks in their own name and under their own responsibility. Moreover, the preamble to the Constitution introduces the principle of subsidiarity, which is one of the doctrinal foundations of local and regional self-government.

Poland's sub-state levels of government consist of 16 voivodeships, districts (34,380 powiaty, 66 cities) and municipalities (2,478 gminy). The three-tier system of territorial organization resulted from two major reforms – the basis of Poland's political transformation after the dismemberment of the communist regime in 1989. The first reform focused on regulating the status of municipalities in 1990, followed by the first fully democratic local elections. The restoration of the dissolved powiat in 1975 was the priority of the second reform, which developed a complex legislative package in 1998, creating the 16 voivodeships based on similar pre-existing territorial demarcations (Звіт CG36, p. 12).

An interesting administrative experience with one of the most fragmented administrative-territorial systems in the European Union is the Czech Republic – part of the former Czechoslovakia, which from 1948 to 1990 was under the leadership of Communism, a satellite state of the Soviet Union.

During the communist regime, several successive reforms of forced merger were carried out, the number of administrative-territorial units decreasing twice, from approx. 11,500 in 1950 to approx. 4,120 in the late 1980s. However, after gaining independence, local democratic values were understood as the right of any locality, no matter how small, to have its own administration, so the number of municipalities increased again, a process called “spontaneous fragmentation” (ЛІНЕР, 2010).

A major aspect of territorial reform in the early 1990s was the abolition of second-level local authorities. As the regional level was considered an instrument of control of the former communist party, one of the first measures of the new government, which came to power after 1989, was the dissolution of regional institutions. The 1990 law on local authorities introduced a one-tier system of local government, in which local authorities have to perform both self-government tasks and responsibilities transferred from central public authorities. However, in 1993 the Czech Constitution introduced a provision for the establishment of a two-tier system of local public administration. The pressures exerted to create a higher level of local government were of two types. The first, of a functional nature, emphasized the need for a regional level to support weak local authorities, increase decentralization by taking over some tasks from the decentralized offices of central authorities and thus help the central level to merge smaller municipalities. The second pressure was external and came from the EU, which used conditionality levers to influence the reorganization of the regional level in line with European regional policy. However, the change did not take effect until the end of 2000, when the first regional council elections were held.

As a result, the 2000 reform greatly increased the level of decentralization and gave it more autonomy, both locally and regionally, as most of the previously devolved functions became independent competencies of local and regional authorities. Regulated since 1990, inter-municipal cooperation has been a widely used alternative to territorial consolidation, because in most cases small municipalities did not have sufficient economic and organizational capacity to provide efficient public services. Some data show that about 70% of local public authorities are involved in voluntary unions.

4. The specifics of local autonomy in the Baltic states

The purpose of the administrative reforms in the 3 countries is a similar one, namely it is based on democratization through decentralization of central power, thus increasing the quality of public ser-

VICES for citizens and especially, their involvement in the public administration process. In the 50 years that the Baltic states were under the Soviet regime, local government did not even exist in terminology, although formally local elections were held to create councils.

Estonia was the first country in the former Eastern bloc to adopt a law on local self-government in 1989. The 1990s were not very successful in terms of territorial consolidation. Typical of those times, the aspiration of citizens for greater local autonomy prevented the establishment of larger municipalities. Another barrier to potential mergers was the legal framework. Until 1995, when the law on administrative-territorial organization was adopted, any merger of municipalities had to be approved by Parliament. When the new provisions were introduced until 1998, possible mergers could only take place when local elections were held. In order to encourage the few territorial consolidation initiatives, an amendment to the Constitution was approved in 2003: extending the term of the councils to 4 years. (Конституція Естонської Республіки від 28.06.199). This encouraged more mergers than in the 1990s, although the total number of municipalities did not decrease much – from 255 in 1993 to 227 in 2010. Because of this, it was often said that Estonia had returned to the pre-Soviet administrative-territorial system rather than implemented a comprehensive and genuine territorial reform.

The most recent local government reform in Estonia took place between 2016 and 2017, with the aim of increasing the capacity of the administrative-territorial units and ensuring a more consistent regional development. Municipalities are the only level of self-government, as counties (*maakonnad* – 15) have become a decentralized level of central government. After the reform, there are 79 territorial-administrative units (before 2017 there were 213): 15 cities and 64 rural municipalities.

One explanation for the relative success of local self-government in Estonia lies in the early, well-thought-out provisions of the 1992 Constitution, on self-government, from the perspective of guarantees on local budgets, powers, mergers. Estonia is also a good practice of local financial autonomy, being one of the largest among EU Member States, although compared to 1999, the fiscal autonomy of local authorities in Estonia has decreased. In general, municipalities have broad powers in local matters, unless the law assigns them to other authorities. Additional functions may be delegated by mutual agreement, and under the Law on Local Authorities, a contract must be signed between

the authorized state body and the local council concerned. This implicitly implies an increase in the tax breakdown rate or the value of the support fund. Being a rule described in theory, this principle is very successfully applied in Estonia.

Immediately after the restoration of independence, Latvia had two levels of local government. The first-level administrative-territorial units were known as large republican cities, towns (*pilsēta*), villages (*pagastas*) and various mergers of the last two categories (*novadi*). Second-level districts have long been known as districts, reminiscent of the Soviet era. The lack of explicit mentions of the principle of local self-government in the Constitution has not been an obstacle to the Constitutional Court declaring and proclaiming the principle of self-government in consistent case law on the recognition and application of the Charter, which entered into force in 1997 (Збір CG34 13, 2018, p.11),

After several sporadic attempts to encourage territorial consolidation, an amendment to the Local Government Act was made in 1997 regarding the obligations of low-infrastructure localities to enter into cooperation agreements with other local authorities in order to meet their obligations. The important administrative-territorial reform took place in Latvia during the years 1998–2009. The old districts were disbanded and 524 small municipalities were amalgamated into larger units. At present, the territory of Latvia is divided into three territorial scales: the state administration; regional governments (not in the classical sense) – 5 planning regions and at the local level, consisting of 119 entities – 9 republican cities and 110 municipalities.

Latvian municipalities are quite autonomous, especially in the field of human resources. As a rule, staff working in local authorities are not “civil servants” but contract employees. This means that, unlike other European countries, such as France, there is no “territorial civil service” at all. In Latvia, the control and supervision of local authorities by the state is carried out by various bodies and institutions, being very limited and strictly regulated.

Therefore we can note that the basic principles governing local government are set out only in the Constitution of the Republic of Estonia and in the Constitution of the Republic of Lithuania. In fact, Lithuania signed and ratified the European Charter just two years after independence, being the first of the Soviet republics to declare independence on March 11, 1990. The process of territorial decentralization in Lithuania began in 1995, with the introduction of the new territorial-administra-

tive reform. Lithuania was divided into two main subnational territorial administrative levels: counties – higher administrative units, the management of which was organized by the government, and municipalities – lower administrative units, where autonomy was introduced. The counties were decentralized state administrations, led by centrally appointed governors, abolished in 2010, their functions being redistributed to either the central government or the municipalities. This abolition was part of a reform aimed at introducing the regions as full-fledged functional territorial units by 2014, but the reform was “frozen” after the abolition and since then the issue of reorganizing the regional level has remained open. Since 2010, regional development councils have been established in each county, composed of: mayors of municipalities belonging to that county, delegates of local councils and an authorized person appointed by the government or government institution.

In Lithuania, the local level comprises single-level bodies, municipalities, which are governed by municipal institutions, elected by the local community. The main criteria for the formation of a municipality are the preparation for the management and maintenance of its environment, the municipal economy, the provision of services to residents and the fulfillment of other functions provided by the law of the Republic of Lithuania on local autonomy. There are 60 municipalities in Lithuania, of which: 43 district municipalities – roughly correspond to the districts that existed under Soviet rule, before 1994 being known only as districts and continue to be so commonly called; and the word “municipality” was added in an effort to diminish the Soviet legacy; 7 municipalities located around big / important cities; 10 municipalities (Звіт CPL35, 2018).

Regarding financial autonomy, the law provides for municipalities the right to freely use over 60% of the financial resources accumulated in municipal budgets for the exercise of independent functions assigned to them by law. Up to 40% of financial resources are made up of special targeted grants, which are allocated either to state delegated functions or to municipal investment projects financed by state investments. Despite a rapid economic recovery from the financial crisis and rising local budgets, the financial resources of local authorities are not yet commensurate with their responsibilities.

There are common features of organizing local government reforms in Latvia, Estonia and Lithuania. At the same time, each Baltic state has a different organization of the local government system.

Each country has gone through specific stages of evolution towards a functional local autonomy.

5. Conclusions

Therefore, the practice demonstrates that the elimination of intermediate administrative levels leads to the efficiency of the local administration system and the increase of the degree of local autonomy. The simplicity of the local administrative system allows for a transparent and direct implementation of functional autonomy, as is the case in the Baltic countries. The legal regulations on local government in the Member States of the European Union are based from an early age on the rules of the European Charter of Local Self-Government, which provides a comprehensive framework of guarantees for the application and observance of the principle of local self-government.

Interesting cases are countries with a transition system. In theory, during the transformation from centralist structures to democratic structures, starting from almost “zero”, these countries had the opportunity to introduce optimal solutions and models. The most visible case is the creation of regional structures – established not in the first phase of the transformation, but often as part of the process of accession to the European Union.

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