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## THE PRINCIPLE OF SUBSIDIARITY AS A FOUNDATION FOR SEPARATION OF POWER AND DISTRIBUTION OF AUTHORITY BETWEEN GOVERNMENT AND LOCAL SELF-GOVERNMENT

**Abstract.** The paper considers issues related to the essential features of subsidiarity as an important principle for separation of power and distribution of authority. Emphasis is placed on the fact that subsidiarity ensures the effective functioning of the government and makes it possible to maximize the democratization and decentralization of public administration through the most effective activity of local self-government. The interaction between the state and local self-governments is proved to depend on many principles that divide power and authority and, at the same time, ensure the integrity and unity of the state power. The paper explains provisions related to the legalization of authority distributed between the state power and local self-government. The fact that central power practices different ways of vesting local self-government with authority (the principle of positive regulation and the principle of negative regulation) is

emphasized. The features of two ways of building a relationship between centre and regions: a) delegation of authority and b) assignment of authority with an explanation of their specifics and features are revealed. Emphasis is placed on the fact that central bodies of state power delegate locally those powers that are more optimally resolved by local self-governments and structures and which also are irrational to decide in the centre. The nature and peculiarities of the mechanisms of interaction between public authorities and local self-governments are explained. Such interaction makes it possible to involve the maximum number of citizens in the issues and processes of public administration and, thus, increases the role of civil society in managing the affairs of the state and society.

**Keywords:** subsidiarity, separation of power and distribution of authority, principles of interaction between public authorities and local self-governments, methods the centre vests local self-governments with authority.

### **ПРИНЦИП СУБСИДІАРНОСТІ ЯК БАЗОВА ЗАСАДА ПОДІЛУ ВЛАДИ ТА РОЗПОДІЛУ ПОВНОВАЖЕНЬ МІЖ ДЕРЖАВНОЮ ВЛАДОЮ І МІСЦЕВИМ САМОВРЯДУВАННЯМ**

**Анотація.** Розглядаються питання, пов'язані із сутнісними особливостями субсидіарності як важливішого принципу поділу влади і розподілу владних повноважень. Робиться акцент на тому, що субсидіарність забезпечує ефективне функціонування влади, дає можливість максимально демократизувати, децентралізувати державне управління за рахунок якомога дієвішої діяльності місцевого самоврядування. Доводиться, що взаємодія між державними органами влади і органами місцевого самоврядування базується на ряді принципів, які, поділяють владу і розділяють владні повноваження і, одночасно, забезпечують цілісність, єдність державної влади. Обґрунтовуються положення, пов'язані із правовим закріпленням розмежованих повноважень державної влади і місцевого самоврядування. Підкреслюється, що існує різна практика надання центром повноважень органам місцевого самоврядування: принцип позитивного регулювання, принцип негативного регулювання. Розкриваються особливості двох способів ви будови взаємин центру і регіонів: а) делегування повноважень; б) передача повноважень з поясненням їх специфіки та особливостей. Робиться акцент на тому, що центральні органи державної влади передають на місця ті державні повноваження, які оптимальніше вирішуються саме місцевими самоврядними органами і структурами і, які, до того ж, нераціонально вирішувати в центрі. Пояснюється характер і особливості механізмів взаємодії органів державної влади і органів місцевого самоврядування, завдяки якому є можливість залучати до питань і процесів державного управління максимальну кількість громадян, а, відтак, підвищувати роль громадянського суспільства в управлінні справами держави і суспільства.

**Ключові слова:** субсидіарність, поділ влади і розподіл владних повноважень, принципи взаємодії органів влади і органів місцевого самоврядування, способи надання центром повноважень місцевому самоврядуванню.

## ПРИНЦИП СУБСИДИАРНОСТИ КАК БАЗОВАЯ ЗАСАДА РАЗДЕЛЕНИЯ ВЛАСТЕЙ И РАСПРЕДЕЛЕНИЯ ПОЛНОМОЧИЙ МЕЖДУ ГОСУДАРСТВЕННОЙ ВЛАСТЬЮ И МЕСТНЫМ САМОУПРАВЛЕНИЕМ

**Аннотация.** Рассматриваются вопросы, связанные с сущностными особенностями subsidiarity как важного принципа разделения властей и распределения властных полномочий. Делается акцент на том, что subsidiarity обеспечивает эффективное функционирование власти, дает возможность максимально демократизировать, децентрализовать государственное управление за счет как можно более действенной деятельности местного самоуправления. Доказывается, что взаимодействие между государственными органами власти и органами местного самоуправления базируется на ряде принципов, которые, разделяют власть и властные полномочия и, одновременно, обеспечивают целостность, единство государственной власти. Обосновываются положения, связанные с правовым закреплением разграниченных полномочий государственной власти и местного самоуправления. Подчеркивается, что существует разная практика предоставления центром полномочий органам местного самоуправления: принцип позитивного регулирования, принцип негативного регулирования. Раскрываются особенности двух способов выстроения отношений центра и регионов: а) делегирование полномочий; б) передача полномочий с объяснением их специфики и особенностей. Делается акцент на том, что центральные органы государственной власти передают на места те государственные полномочия, которые оптимально решаются именно местными самоуправляющимися органами и структурами и, которые, к тому же, нерационально решать в центре. Объясняется характер и особенности механизмов взаимодействия органов государственной власти и органов местного самоуправления, благодаря которому есть возможность привлекать к вопросам и процессам государственного управления максимальное количество граждан, а следовательно, повышать роль гражданского общества в управлении делами государства и общества.

**Ключевые слова:** subsidiarity, разделение властей и распределение властных полномочий, принципы взаимодействия органов власти и органов местного самоуправления, способы предоставления центром полномочий местному самоуправлению.

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**Problem Statement.** Today, a specific practical mechanism for cooperation between the state and local self-governments exists. Apart from direct contacts, it is about cooperation through the activity of various unions and associations of municipalities. It

is through such structures that the state power can reach out to the maximum number of citizens; after all, it is a mechanism for linking the state with the civil society. In addition, the practice of creating various coordinating, consultative, advisory (temporary and

permanent) working parties, councils, commissions, and the like, has become widespread in recent years. Such public policy is gaining more publicity and openness, which, in turn, requires more detailed scientific research.

**Analysis of Recent Research and Publications.** The principle of subsidiarity as a socio-political phenomenon is sufficiently studied by such contemporary foreign and domestic scholars as N. Anisimova, A. Aroyan, Weimer, David L., Weining R., N. Gaydaenko, O. Gufe, E. Karakulian, V. Kuibida, V. Malinovsky, N. Nizhnyuk, T. Panchenko, O. Radchenko, V. Tertichka and V. Halipov. A bigger number of works is dedicated to the organization of local self-government, among which are the works of O. Batanov, P. Biley-chuk, M. Borislavskaya, M. Golovaty, A. Kostenko, O. Lazar, V. Malynovsky, A. Nekryach, I. Pogorelova, V. Utvenko, and others.

**Purpose of the Article.** The purpose of this article is to systematize views on the principle of subsidiarity as an effective means of strengthening state power through power separation and authority distribution. The article attempts at justifying through which components the separation of power between centre and regions can be the most fruitful and effective in the interests of an individual, the state and society at the same time.

**Main Material.** The historical genesis of modern countries and societies undoubtedly proves that power separation and authority distribution, first and foremost between the state and local self-governments, is an essential condition for progressive social development. In scientific terms, this prin-

ciple (process) has become known as “subsidiarity”.

The objective right of the principle of subsidiarity to life is in the fact that government and the powers of its bodies cannot be objectively concentrated only in one place, and, above all, extend to all governmental decisions and processes. In the conditions of democratization of social life, decentralization of public administration, the increasing role of civil society in the functioning of large societies, subsidiarity becomes the principle (mechanism) of the optimal ordering of relations between different levels of social hierarchy in the state. Secondly, the constituent elements of any social system cannot live “absolutely” without the centre because, without it, its help and support, they will not be able to survive and fruitfully exist. Thirdly, there is a need to assign authority from the centre to regions if they are most effectively implemented in the regions. Fourthly, there is a need for mutual responsibility of the centre and regions for the successful implementation of state policy when the interests of the centre and regions are mutually consistent. Lastly, the effectiveness of the subsidiarity principle is paramount when the competencies between the centre and the regions compete [1].

Terminologically, it is important to bear in mind that the separation of power is its division between the main branches of power in the state, and the distribution of authority is the distribution of powers (authority) between the centre and regions. Both processes form public administration, which is based on the development of horizontal (rather than vertical) links between the state and civil society.

The principle of subsidiarity requires an obligatory distribution of authority between local self-governments and state bodies, although there has always been and always will be an interaction between them. It means, first of all, the existence of a set of legal norms and methods, which, in the aggregate, are aimed at joint resolution of both state and local tasks. In both cases, the rights and interests of an individual and the citizen are in the centre of such distribution and interaction.

In theory and practice, the interaction between state bodies and local self-governments is based on the following fundamental principles:

- common goals and objectives aimed at ensuring the rights and freedoms of an individual and the citizen and, consequently, the realization of national interests;
- comprehensive state support for the implementation and development of local self-governments (financial, political, organizational-managerial, etc.);
- distribution (simultaneously) of subjects and powers between state bodies and local self-governments;
- maximum autonomy (self-governance) of local self-governments, its bodies, and its officials to exercise its powers;
- non-interference of state authorities in the competence and practice of local self-governments (however, the control functions of the state power over local self-governments still remain and are clearly defined by law);
- subsidiarity when local self-governments implement minimum state standards and individual state powers delegated to them;
- publicity and awareness;

- mutual control over activities;
- resolution of existing conflicts through agreed procedures or judicial appeals;
- purposefulness and adherence to national interests;
- availability of local self-government resources.

State support for local self-governments is enshrined in law and implemented in the following generally accepted forms:

- development and adoption of relevant legal acts on the functioning of local self-governments;
- control over the compliance of local self-government with the relevant constitutional norms related to its activities;
- proper information support for local self-governments;
- methodological assistance to local self-governments;
- participation in the formation of local self-governments in cases provided for by law;
- training for municipal authorities;
- financial assistance to local self-governments.

By law, local self-governments receive separate state powers by excluding such powers from the competences of state bodies. In the meantime, it is important to bear in mind that the world practice of vesting local self-governments with authority of the centre is carried out mainly in two ways. The first method is inherent in the countries of the Anglo-Saxon system and is referred to as the principle of *intra vires* – the principle of positive regulation. It is about the assignment of those powers, which are precisely defined by relevant law. If local self-government

does not act under the law, such actions are regarded as illegal. Another principle, which is referred to as “negative regulation” – *ultra vires* – is continental and occurs when local self-governments do everything that is not prohibited by law and that does not fall within the competence of other bodies.

If the above approaches are compared, the principle of the continental system seems to give local self-governments more freedom in their functioning since authorities of such a government can determine the extent of their competence on their own. However, some specialists [2; 3; 4–6] indicate that, in such a case, local self-governments are less protected from an arbitrary reduction of their powers since the state, in its own right, can expand their competence in one way or another. Quite often, the highest agency of state power unilaterally does so in a statutory way. As for the Anglo-Saxon system of authority distribution, it is difficult to make such a distribution of authority unilaterally since the rules governing the competence of municipalities are enshrined primarily in their statutes, which have the relevant legal force. Even if national law changes in any way, the statutes of local authorities are not subject to change. Such a practice exists in many, first of all, European countries.

It is also worth noting that the theory and practice of implementing local self-governments involve two forms of granting separate state powers to such governments – delegation and assignment – which are different procedures. Delegation of authority is the procedure when a specific state body grants a proper right to resolve issues to lo-

cal self-government. Such granting is one-time, with specified time intervals (terms) or indefinitely. As for assignment of authority, it means that certain powers are excluded from the competence of the centre and transferred to local self-governments, with inclusion into their competence. As a rule, the term of the transfer of such powers is not specified.

Given these features, “delegation of authority” and “assignment of authority” should be defined as sufficiently different political and administrative procedures. Thus, in addition to the constitutional vesting of local self-government in modern Ukraine, the Law on Local Self-Government in Ukraine states that the competence of local self-governments may include some state powers delegated to them by the state [4]. However, it also notes that granting such certain state powers to local self-governments is carried out only by law.

Significant importance is which state powers by nature and features are most often assigned from state authorities to local self-governments for rational necessity. International and national practices show that such powers are primarily:

- state registration of civil status;
- licensing (sale of alcoholic beverages; activities for the procurement, processing and practical sale of non-ferrous and ferrous metals scrap; educational activities of institutions located on the territory of municipalities);
- compensation services of different nature;
- medical and social examinations;
- implementing state urban planning cadastre and monitoring objects of urban planning activity;

- setting values of individual adjusting coefficients when calculating a single income tax for certain activities;
- procedure for the use of individual natural resources;
- activities of various administrative commissions, and the like.

Under these conditions, as it was mentioned before, local self-governments are deprived of their powers assigned to them, which is also regulated by law.

Finally, it is worth noting that, in the theory of municipal governance, three basic models of interaction between the municipal government and public authorities have been formed. The first model is the partnership model (J. St. Mill – 19<sup>th</sup> century), which is an idealistic model of “equal” partnership, to some extent. The second model – the agency model (as opposed to partnership) – refers to the dominant role of higher state authorities in the state administration, while local self-governments (managements) serve only as a specific administrative means to exercise managerial functions locally. The last of three models, which is a “balanced” model of interaction between the centre and local communities, is the “model of interdependence”. Most likely, such a model is by far the most appropriate and rational if taking into account the noticeable development and proliferation of such basic types of communication between the state power and local self-government as subordination (ordered from top to bottom), coordination (mostly, horizontal nature), and re-ordination (mostly similar to subordination).

It should be emphasized that the foundations of interaction between

state authorities and local self-government in Ukraine are reflected in the Constitution of Ukraine [5] through a system of guarantees, support and protection of the functioning of local self-government.

**Conclusions and Prospects for Further Scientific Intelligence.** Therefore, the principle of subsidiarity is now increasingly being researched as one of the most critical factors in maintaining the integrity of state power precisely through the separation of power and the distribution of authority. Another great scientific interest is the question of how and to which extent the democratization of public relations, the decentralization of public administration and the increase of influence on civil society processes will influence the process of subsidiarity. Political, sociological, marketing and other peculiarities of the above processes, which permeate the range of issues, require even more in-depth and substantive analysis. Undoubtedly, the process of radical transformation, including through the practical implementation of the principle of subsidiarity, modern models of government, both abroad and in modern Ukraine, is taking place now.

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