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LEGAL SUPPORT OF FINANCIAL INDEPENDENCE OF TERRITORIAL COMMUNITIES IN UKRAINE

Key words: decentralization, local self-government, financial independence, local budget, state policy, tax administration, opinion poll.

ABSTRACT: The article provides a scientific analysis of the financial independence of territorial communities, which is aimed at strengthening the implementation of decentralization measures in Ukraine. Indicated that problems of financial support of the local government powers are the focus of Ukrainian scientists, experts in local budget management and finance. Independence in the aspect of local self-government should be considered within the norms established by the Constitution of Ukraine, the European Charter of Local Self-Government, and other legislative acts. Performed theoretical and applied identification of the “financial independence of the territorial community”.

Analyzed the key provisions of the Ukrainian legislation on financial support of territorial communities, which were transformed in the process of decentralization during 2014–2020. Highlighted the state policy components of ensuring the financial independence of territorial communities, based on the principles of the European Charter of Local Self-Government. Measures of state policy to ensure the financial independence of territorial communities can be systematized into two groups: 1) direct participation of the state in the formation of financial resources of communities and territories; 2) indirect participation of the state in the formation of financial resources of communities and territories and their disposal. Noted that consolidation of revenue sources in local budgets of Ukraine is characterized by instability.

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Summarized the results of the sociological study of the financial support of territorial communities in terms of their financial independence. Emphasized the lack of legal opportunity for local governments to independently keep records of personal income tax and other national taxes in terms of their payers.

Proposed the measures to improve the administration of taxes, which are a source of revenue to local budgets: organization of a digital information network on the payment of taxes and other mandatory payments by individuals and ensuring access to it by local government officials; establishing interaction of territorial bodies of the State Tax Service of Ukraine with local self-government bodies on issues of control over the correctness and timeliness of tax payments and other obligatory payments by individuals and legal entities, etc.

INTRODUCTION

The most important component of the reforms carried out in Ukraine in recent years is undoubtedly financial decentralization. Since December 2014, the Budget and Tax Codes of Ukraine have undergone significant changes aimed at improving the situation with the receiving of funds in local budgets that are in direct relations with the state budget (budgets of territorial communities, regional budgets). This has strengthened local budgets. According to the Ministry of Communities and Territories Development of Ukraine, the own revenues of the general fund of local budgets for 2015–2019 increased 4 times from 68.6 billion UAH. in 2014 to UAH 275.2 billion. in 2019 (Monitorynh protsesu detsentralizatsii vlady ta mistsevoho samovriaduvannia stanom na 10 veresnia 2020 roku).

The implementation of governmental decentralization in the state is aimed at strengthening the independence of territorial communities and local governments which they form, to address issues of local importance, as well as decision-making on the development of communities and territories.

At the same time, despite the significant increase in the powers of local governments to address issues in many areas of life of local communities, as well as expanding sources of revenue to local budgets, the issue of financial independence of local communities remains relevant.

The problems of financial support of the range of powers of local governments are the focus of Ukrainian scientists and experts in local

budget management and finance. They explore various aspects of multifaceted financial issues at the local level - the nature and functions of local finances, the peculiarities of local budgets, the formation of inter-budgetary relations, financial architecture at the local level, financial decentralization and more. The published results of scientific research make a significant contribution to the further development of the theory and practice of public administration and administration in the field of local finance. However, modern challenges arising under the influence of local government reform, administrative and territorial organization of Ukraine and other political and economic factors require a study of financial independence of communities and territories, and the role of the state in shaping its legal framework.

The purpose of this article is to define the essence of the concept of “financial independence of the territorial community” and justify measures to improve the legal support of financial independence of communities and territories in Ukraine. To achieve this goal, the following *tasks* were solved: performing the theoretical and applied identification of the concept of “financial independence of the territorial community”; analysis of key provisions of the legislation of Ukraine on financial support of territorial communities, which were transformed in the process of decentralization during 2014–2020; generalization of the results of sociological research of financial support of territorial communities in terms of their financial independence.

IDENTIFICATION OF THE CONCEPT OF “FINANCIAL INDEPENDENCE OF THE TERRITORIAL COMMUNITY”

The concepts of “financial independence”, “financial independence”, “financial autonomy” are being actively used in research and publications, speeches of public figures of different status, but so far there is no unanimous approval of their essence and relationship to the scientific community. At the same time, as a rule, attention is paid to the ability of local governments to independently decide on the formation of local budgets and the use of budget funds.

The academic explanatory dictionary of the Ukrainian language provides three interpretations of the word “independent”, namely - 1) those who are not “under someone’s authority”, i.e. are not subordinate to anyone (when it comes to states, political organizations, etc.); 2) the one who (what) is separate from others; “that, among others, matters in itself; separate”; 3) someone who does something “on their own or on their own initiative, without outside help or guidance” (Slovyk ukrainskoi movy: akademichnyi tlumachnyi slovnyk v 11 tomakh (1970–1980). Tom 9, 1978). In further research, we will rely on the first option, i.e. consider independence as a lack of subordination and controlled influence.

Of course, independence in the aspect of local self-government should be considered within the norms established by law. The Constitution of Ukraine stipulates that local self-government is “the right of a territorial community to *independently* resolve issues of local significance within the Constitution and laws of Ukraine” (Konstytutsiia Ukrainy, 1996). However, in the European Charter of Local Self-Government of 1985, local self-government is defined differently - as “the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs *under their own responsibility* and in the interests of the local population” (Ievropeiska khartiia mistsevoho samovriaduvannia, 1985). The Law of Ukraine “On Local Self-Government in Ukraine” provides another definition of local self-government – as “a state-guaranteed right and real ability of a territorial community to resolve local issues *independently or under the responsibility of local self-government* bodies and officials” (Pro mistseve samovriaduvannia v Ukraini: Zakon Ukrainy vid 21.05.1997, No. 280/97-VR). Thus, the Constitution of Ukraine emphasizes the independence of local issues, the European Charter of Local Self-Government emphasizes the responsibility of local governments for regulation and management, and the Law on Local Self-Government emphasizes the independence of the community and the responsibility of local governments.

When it comes to financial independence, we recall the Budget Code of Ukraine. Both its first (June 21, 2001) and second (July 8, 2010) editions include the principle of independence among the principles of the budget system, which in the above wording reflects three elements: 1) fixing the

respective sources of income at the budgets of different levels, 2) the right of public authorities, authorities of the Autonomous Republic of Crimea and local governments to determine the use of relevant budgets in accordance with the laws of Ukraine, 3) the right of the Verkhovna Rada of the Autonomous Republic of Crimea and local governments “to consider and approve local budgets independently of each other” (Biudzhetni kodeks Ukrainy vid 08.07.2010, No. 2456-VI). It is emphasized that the state is not responsible (at the expense of the state budget) for the budget obligations of the authorities of the Autonomous Republic of Crimea and local governments. For their part, the authorities of the Autonomous Republic of Crimea and local governments “are not responsible for each other’s budgetary obligations, as well as for the state’s budgetary obligations” at the expense of the respective local budgets (Biudzhetni kodeks Ukrainy vid 08.07.2010, No. 2456-VI).

The term “financial autonomy” is not uncommon in publications on this topic - we consider it beneficial to avoid its use, based on the following considerations. First, the Dictionary of Terms and Concepts of Public Administration (2005) provides the following definition of “autonomy”: “the right to independently resolve economic, financial, socio-cultural, administrative and other issues of public administration of a certain part of the state, which is enshrined in the Constitution and legal acts of autonomous formation” (Malynovskyi V.Ia. Slovník terminiv i poniat z derzhavnoho upravlinnia, 2005, p. 7). There are two types of autonomy defined - state (political or legislative) and administrative (local) autonomy and their interpretation is given. Secondly, the terminology dictionary on public administration (2018) also provides a definition of legislative autonomy and political autonomy (Kuibida V.S., Bilynska M.M., Petroie O.M. (zah. red.). Publichne upravlinnia: terminolohichni slovník, 2018, p. 9). However, these dictionaries use different approaches to the implementation of the typology itself: in the first - political and legislative autonomy are considered synonymous and belong to one type of autonomy – state; the second approach separates legislative and political autonomy into separate types. The meaning of these terms also differs, which indicates their ambiguity and debatability and requires further research and clarification.

Thus, the study allowed to formulate the concept of “financial independence” as follows: financial independence of the territorial community – is the position of the community as a subject of local self-government, which is reflected in its relations with other public entities (public authorities and other entities of a local self-government, public associations) and is characterized by the following key features: 1) the possibility and ability of the community and its local governments to make decisions within their competence about formation, disposal and use of community financial resources regardless of the governing influences at another level (external influences); 2) own responsibility of local self-government entities for the decisions made on the distribution of financial resources; 3) guaranteeing by the state the stability of sources of the financial resources in the volumes sufficient for fulfillment of the powers provided by the law (both own, and delegated), and protection against introduction of their restrictions (unpredictable change of conditions and mechanisms of filling of budgets and use of budgetary funds) appropriations, etc.).

According to the website of the Ministry of Finance of Ukraine, today all local budgets in Ukraine are independent, as “the problem of full budgetary independence and financial independence of local budgets is regulated at the legislative level” (Ministerstvo finansiv Ukrainy, Mistsevi biudzhety). In particular, the relevant sources of budget revenues are assigned to them; local governments have the right to determine the use of budget funds in accordance with the laws of Ukraine, and local councils have the right to set local tax rates within the limits set by law, as well as provide benefits for their payment, and independently consider and approve relevant local budgets. However, this information does not even mention the responsibility of local governments for decisions on the use of budget funds.

One of the manifestations of financial independence of communities is defining the costs of maintaining the administration of local governments at their own discretion. In this regard, it is interesting to study the ratio of expenditures for the maintenance of the management staff to the amount of revenues of the general fund of local budgets (excluding transfers). According to the results of 2020, certain “record holders” of this indicator are such communities: Vole-Baranetska (Lviv region) – 96.9%;

Novytska (Ivano-Frankivsk region) – 94.3% and Mizhenetska (Lviv region) – 93.7%. This means that virtually the entire general fund of these budgets goes to pay salaries and there are no funds left for local programs on the development and support of public utilities (for example, health care that provides primary care), as well as for paying utility and energy costs, as provided by the Budget Code of Ukraine. The lowest values of the ratio of expenditures for the maintenance of the management staff to the amount of revenues of the general fund of local budgets (excluding transfers) in 2020 were achieved by the following communities: Vyzyrsk (Odessa region) – 6.9%; Vinnytsia (Vinnytsia region) – 7.6%; Zhytomyr (Zhytomyr region) – 7.8%.

TRANSFORMATION OF LEGISLATION ON FINANCIAL SUPPORT OF TERRITORIAL COMMUNITIES

In order to fulfill the tasks, set by the government to expand the financial independence of communities and strengthen the self-sufficiency of local budgets, amendments were made to the Tax and Budget Codes of Ukraine, which have already significantly expanded the financial capacity of communities. In particular, in the conditions of decentralization such normative-legal innovations were introduced.

Since 2015, there is no distribution of the revenue part of the general fund of the local budget into the first and second baskets, or revenues that are taken into account or not taken into account when determining the amount of intergovernmental transfers.

The equalization and withdrawal of costs from local budgets to the state budget has been canceled, and basic and reversed subsidies have been introduced instead.

A new standard for the distribution of personal income tax between budgets has been established:

- from 01.01.2015 – to the budgets of cities of regional significance 60% (previously it was 75%), to the budgets of united communities 60%, to the district budget 60% (previously – 50%), to the regional 15% (previously – 25%), to the state budget 25% (previously – 0%),

to rural, settlement, cities of district significance budgets - 0% (previously - 25%) (Pro vnesennia zmin do Biudzhetnoho kodeksu Ukrainy shchodo reformy mizhbiudzhetnykh vidnosyn: Zakon Ukrainy vid 28.12.2014 No. 79-VIII);

- from 01.01.2021 - to rural, settlement, city budgets - 60%; to the budget of Kyiv - 40%, to the regional budget - 15% (Biudzhetnyi kodeks Ukrainy vid 08.07.2010 No. 2456-VI).

Amendments were made to the list of local taxes and fees: the local fee for conducting certain types of business activities was canceled from January 1, 2015; property tax was included in local taxes, which consists of: payment for land (land tax and rent), as well as tax on real estate other than land (which was transferred from the special fund to the general fund). The transport tax on luxury cars has been introduced since 2015: cars subject to taxation are no more than 5 years from the year of issue, at the rate of UAH 25,000. per year.

The list of revenues to the general fund of local budgets has been expanded by transferring the single and environmental taxes, as well as the real estate tax from the special fund.

An excise tax has been introduced on the sale of excisable goods by retail economic entities – it's accounted to the local budget (excise tax payers are business entities selling beer, alcoholic beverages, tobacco products, tobacco and industrial substitutes for tobacco, petroleum products, liquefied gas, substances used as components of motor fuels, motor fuel alternatives).

The number of groups of single taxpayers of individual entrepreneur tax has been optimized under the simplified taxation system - reduced to four (previously there were 6 groups), while 4 groups of single taxpayers since 2015 include agricultural producers or taxpayers who previously paid a fixed agricultural tax.

The key role in ensuring the financial independence of territorial communities is played by the state in the face of legislative and executive bodies. We highlight the following components of the state policy to ensure the financial independence of territorial communities, based on the principles enshrined in the European Charter of Local Self-Government (Article 9) (Ievropeiska khartiia mistsevoho samovriaduvannia, 1985):

- determination of sources of financial resources of local self-government (both own, which are fully accounted to the relevant local budget, and fixed national, which are accounted to the relevant local budget in a certain part), equivalent to the powers of local governments and officials under the Constitution and laws of Ukraine;
- guaranteeing in the long run the stability of the established sources of revenues and deductions from national taxes and fees; ensuring consistency of decisions on financial resources of territorial communities and avoiding their frequent change;
- ensuring full synchronization of the amount of financial resources and the range of powers delegated by the state to local governments;
- protection of financially weak communities through the implementation of budget equalization mechanisms (both vertical and horizontal) in order to overcome the fiscal imbalance, the occurrence of which prevents the adequate implementation of local government powers to ensure the viability of the territorial community and its sustainable development; establishing clear, objective, transparent and understandable criteria, procedures and financial equalization measures;
- minimization of the state intervention in the use of funds distributed between local budgets, so as not to restrict the freedom of local governments to choose and decide on the disposal of financial resources;
- motivating local governments to make the most of their income opportunities and increase the financial potential of communities and territories;
- ensuring a reliable structure of the financial market and access of local governments to it for the implementation of investment capital loans;
- conducting on a regular basis consultations with local governments about decisions on the conditions and procedure for the transfer of distributed and redistributed financial resources and changes to them.

Thus, all measures of the state policy for maintaining the financial independence of territorial communities can be systematized in two groups:

- 1) direct participation of the state in the formation of financial resources of communities and territories, that include the establishment of shares of national revenues and fees, which are credited to local budgets; intergovernmental transfers in the form of grants, subsidies and subventions; financing the measures of national target and complex programs implemented in specific communities and regions; joint financing of measures to implement state priorities in regional development strategies (on the basis of agreements concluded in accordance with the Law of Ukraine “On Stimulating the Development of Regions” between the Cabinet of Ministers of Ukraine and the relevant regional council); financing of projects and programs of regional development from the State fund of regional development which is annually created as a part of the general fund of the state budget, etc.;
- 2) indirect participation of the state in the formation of financial resources of communities and territories and their disposal - assistance, which can include loan guarantees; creating conditions for local governments to enter the domestic capital market; establishing formulas for calculating expenditures for the powers granted, transferred and delegated to local governments in the different areas of life of a territorial community, etc.

It should be noted that the consolidation of sources of revenue in local budgets in Ukraine is characterized by instability. Thus, back in December 2014, the Law of Ukraine “On Amendments to the Budget Code of Ukraine on the Reform of Intergovernmental Relations” of 28.12.2014 № 79-VIII established that the excise tax on the sale of excisable goods by business entities (alcoholic beverages, tobacco products, fuel) is accounted to the budgets of the united territorial communities, city budgets (Pro vnesennia zmin do Biudzhetnoho kodeksu Ukrainy shchodo reformy mizhbiudzhetnykh vidnosyn: Zakon Ukrainy vid 28.12.2014 No. 79-VIII). And in September 2020, this norm was excluded from the Budget Code by the Law of Ukraine “On Amendments to the Budget Code of Ukraine” of September 17, 2020 № 907-IX. In December 2020, the Law of Ukraine “On Amendments to the Budget Code of Ukraine” of 15.12.2020 № 1081-IX established that 13.44% of the excise tax on fuel (both produced in

Ukraine and imported into the customs territory of Ukraine) are accounted to the general fund of budgets of the respective rural, settlement, city territorial communities automatically in the order determined by the Cabinet of Ministers of Ukraine (Pro vnesennia zmin do Biudzheth-noho kodeksu Ukrainy: Zakon Ukrainy vid 15.12.2020, No. 1081-IX).

SOCIOLOGICAL RESEARCH ON FINANCIAL SUPPORT OF TERRITORIAL COMMUNITIES

In order to study the financial security of communities in the context of decentralization and develop recommendations for adequate response to the challenges of budget reform during December 2019 - February 2020, the following survey was conducted: "Financial security of local communities: the course of decentralization". The target groups of the study were local governments (45.9%) and local executive bodies (29.3%), as well as a mixed group of employees of budgetary institutions (10.8%), business entities of all forms of ownership (5, 7%) and representatives of other organizations (8.3%) of several regions of Ukraine. The geography of the study included mainly Kharkiv, Poltava, Luhansk, Sumy regions (95.5% of the total number of participants). In addition, on their own initiative, the study involved some representatives of public administration of Donetsk, Kyiv, Zaporizhia and Cherkasy regions, who at that time were studying for a master's program or advanced training at the Kharkiv Regional Institute of Public Administration of the National Academy of Public Administration under the President of Ukraine (4.5% of participants). The summary of the respondents' answers is given in the table 1.

Indeed, in recent years the partial payment of the benefits provided by law for certain categories of citizens has been transferred to local budgets, forcing local governments to divert their own funds to finance privileged categories of citizens, the list of which is established by Ukrainian law and is a social obligation of the state – for example, preferential travel for certain categories of citizens in public transport, the right to which is enshrined in law, i.e. guaranteed by the state. This situation, on the one hand, leads to the imbalance of local budgets, and on the other - violates

Table 1. Generalization of respondents' answers to questions about the positive and negative results of budget decentralization, as a percentage of the total number of respondents

Distribution of answers to the question “What positive results of budget decentralization would you note in the first place?”		Distribution of answers to the question “What negative results of budget decentralization would you note in the first place?”	
Answer options:	%*	Answer options:	%*
– greater independence at the disposal of budget funds	58,0	– financing from local budgets of benefits provided by the state	40,0
– growth of financial resources that the community can manage	50,3	– imposing additional costs on communities for education and health care facilities	32,5
– new sources of revenue to the local budget	44,6	– incomplete financing of the medical subvention	30,6
– transparency of local financial management	26,1	– lack of financial resources in the local budget	26,8
– increase in assistance from the state budget	16,6	– lack of infrastructure funding	22,3

* The amount exceeds 100%, because the respondent could choose several answer options (but not more than 3 positions).

the rights of citizens to statutory benefits, compensation and state guarantees for their implementation (for free travel – only one of them), as well as other services.

As one of the problems in implementing the financial independence of communities in terms of ensuring revenues to the local budgets, the respondents called the lack of local government information about taxpayers. This correlates with the answers to the question “What powers in the area of local financial management do you think communities lack?” - 35.5% of respondents answered in favor of the option “Administration of local taxes and fees”, and 32.5% – chose the option “Use of the tax base of taxpayers and fees to fill budgets”.

The problem is the following. Personal income tax makes up 60–68% of all revenues to the general fund of local budgets. According to the monitoring data as of October 10, 2021, carried out by the Ministry of

Development of Communities and Territories of Ukraine, in the budgets of territorial communities this tax is 59.9%, and in regional budgets - 68.2% of general fund revenues for January-August 2021 (Monitorynh protsesu detsentralizatsii vldy ta mistsevoho samovriaduvannia stanom na 10 zhovtnia 2021 roku). As mentioned above, this tax is distributed between the budgets of different levels. However, the current legislation does not allow local governments to independently keep records of the tax in terms of taxpayers. A similar situation exists for taxpayers who pay contributions for other taxes:

- a single tax on agricultural producers, in which the share of agricultural production for the previous tax (reporting) year is equal to or exceeds 75%;
- environmental tax;
- monetary penalties for damage caused by violation of legislation on environmental protection as a result of economic and other activities.

We emphasize that the implementation of expenditures for the functioning and development of the community is the task of local governments, and local budget revenues are a way of covering them. This means that without mobilization of relevant revenues to local budgets (and appropriate analytical control over this process by local governments) it is impossible to exercise their own powers and powers delegated by the state.

Therefore, each local council (of different budget levels) must have information on the status of actual tax payments and fees, as well as on taxpayers who are located and carry out their business activities in the respective territories in order to properly plan the completeness of budget revenues.

Although the state financially supports local self-government, participates in the formation of local budget revenues, monitors the legal, appropriate, economical, efficient use of funds, as well as their proper accounting, local governments today do not have access to relevant information on taxpayers and paid amounts.

CONCLUSIONS

Based on the results of the study, it can be concluded that the transfer of powers from the state to local governments allows for decentralization, implementation of the principle of subsidiarity, but this process must be accompanied by the simultaneous transfer of financial resources. We consider it urgent to implement the financial independence of territorial communities in the long run to ensure the stability of the legislative definition of the list of sources of revenue to local budgets, the establishment of restrictions on local budget expenditures for the maintenance of local government and more.

In order to improve the situation regarding the administration of taxes, which are a source of revenue to local budgets, we consider it necessary to introduce the following measures:

- 1) organization of automated information processing on tax payments and other obligatory payments by individuals in the mode of a computer network with secure access of local government officials, who perform analysis and budget planning;
- 2) interaction of territorial bodies of the State Tax Service of Ukraine with local self-government bodies in order to ensure control over the correctness and timeliness of tax payments and other obligatory payments by individuals and legal entities;
- 3) organization of normative and reference information for interaction of state tax inspections of all levels with other executive bodies and local self-government bodies.

Further explorations can be carried out in the direction of studying the mechanisms of communication of public administration entities on the formation and implementation of local budgets in terms of reforming the subregional level of administrative-territorial organization of Ukraine.

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