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DECENTRALIZATION: EUROPEAN COURT OF HUMAN RIGHTS' JUDGEMENTS IMPLEMENTATION[1]

Problem statement and its connection with important scientific or practical tasks. Nowadays the principle of subsidiarity is quite popular in Ukrainian scientific literature. In addition, it is also a wide-spread topic for the authors of the quasi-scientific articles, which reveal the problems of the organization of public power. This provides the basis for the potential of this principle to be used to the maximum in Ukraine. Therefore, an important scientific direction is to study the content of this multifaceted principle.

A lot of Ukrainian theoreticians and practitioners deal with the problems of the decentralization, when it comes about the local level, municipal reform. These specialists mostly research and practice the municipal law and concentrate at the municipal government problems.

At the same time, a lot of Ukrainian theoreticians and practitioners pay huge attention to the problems of the implementation of the judgements of the European court of human rights (ECHR), especially lately – as in 2021 it was 25 years since Ukraine has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

Analysis of recent research and publications, which initiated the solution of this problem and on which the author relies, highlighting previously unresolved parts of the overall problem to which the article is devoted. The principle of decentralization is a 'hot' topic in the Ukrainian legal literature. As the country has the ongoing municipal reform, more or less the principle of decentralization is the rather popular topic of the research (see [1–4], for example, and many other works by M.O. Baimuratov, O.V. Batanov, P.M. Lubchenko, as well as the other specialists in the Ukrainian municipal law). So far, in the Ukrainian legal literature the principle of decentralization wasn't connected with the European court of human rights' judgements' implementations. But this topic becomes more and more popular in the EU legal literature, thanks to the constant researches of Professor Й.Lambert (see [5–7], for example). Professor Lambert represents

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the French legal school, but her researches are not only multidisciplinary, but also multilevel (as she pays attention both to the national legislation and the Council of Europe's bodies documents and activity), but also multicultural (as she researches not only the French experience, but also the experience of the other countries, that are members of the Council of Europe).

It is essential to enrich the Ukrainian legal science and constitutional practice with this idea and to develop it at the national level according to the national constitutional principles.

The aim of the article is to propose to combine the Ukrainian municipal reform and the Ukrainian attempts of the raise the effectiveness of the implementation of the ECHR's judgements.

At the current stage, in the Ukrainian legal literature on constitutional and administrative law, the principle of subsidiarity is mentioned in the municipal context. There were even proposals to include this principle into the text of the Constitution of Ukraine by the authors of the numerous draft laws of Ukraine on "On Amendments to the Constitution of Ukraine (Regarding Decentralization of Power)" – for example, drafts with this name reg. No. 4178a dated June 26, 2014, reg. no. 2598 dated December 13, 2019, Registry No. 2598-a dated December 27, 2019 etc.

Incidentally, it hardly makes sense to include the very phrase "principle of subsidiarity" in the text of the Constitution of Ukraine. Moreover, the principle of subsidiarity is reproduced in the constitutional provisions indirectly, and at the current stage it is more expedient to focus on its implementation as fully as possible, taking into account the martial law regime.

However, there is a positive trend, according to which the phrase "principle of subsidiarity" is gradually "appearing" in the normative thesaurus more and more often. For example, in 2021 it happened more than once.

One of the examples can be the Decree of the President of Ukraine dated September 7, 2021 "On the National Strategy for Promoting the Development of Civil Society in Ukraine for 2021–2026". In this document, it was assumed that "strategic tasks are: ... involvement of civil society institutions in the assessment, taking into account the principle of subsidiarity of needs in socially significant services, in particular social, publicizing information about its results and planned expenditures". Thus, the emphasis was placed on the fact that this principle cannot be implemented solely by the efforts of public authorities, it is also necessary to involve the organized public.

Another example is the mention of this principle in the text of the Decree of the President of Ukraine dated September 27, 2021 "On the decision of the National Security and Defense Council of Ukraine dated August 20, 2021 "On the introduction of a national system of stability"". This principle was mentioned twice:

– "The introduction of a multi-level comprehensive national resilience system based on the national interests of Ukraine and taking into account international experience will contribute to the formation of the necessary capacities at the state, regional and local levels for the prevention and proper response of the state and society to a wide range of threats and rapid recovery after crisis situations";

– "The national system of stability should be based on such principles as: ... subsidiarity – involving the separation of powers and distribution of the responsibilities, in which key decisions regarding response to threats and crisis situations are made at the lowest possible level with coordination at the highest appropriate level".

The trend continued in 2022. Thus, when amending the Law of Ukraine "On the Basics of State Regional Policy" in Article 3 "Principles of State Regional Policy" it was clarified that state regional policy is implemented on the basis of a number of principles, including the principle of "subsidiarity - the exercise of powers on the lowest level of management at which it is most effective".

In addition, the principle of subsidiarity is mentioned in Ukrainian legal literature on international law, more precisely, on European law (not as often as in the municipal legal context, but still with some frequency). It is already mentioned in a slightly different sense.

Thus, as of today, a rather paradoxical situation has arisen, when in Ukraine there are allegedly two essentially different principles, but they are called the same.

To summarize, the difference in the meaning of these principles is as follows.

In the literature on international law, it is traditionally noted that this is one of the principles of European constitutionalism, which is used in relation, firstly, to the interaction between the bodies of the European Union and the state authorities of the member states of the European Union and, secondly, to the interaction between the state authorities and local self-government bodies. In the international law of Ukraine, the concept of "principle of subsidiarity" is used in the first sense in the context of European integration (see, for example, the Protocol on the Application of the Principles of Subsidiarity and Proportionality of October 2, 1997 to the Treaty on the Establishment of the European Community), and in constitutional law – in second meaning, i.e. in the context of decentralization of state power and municipal reform.

It is worth adding that the authors ignore the fact that the documents of the Council of Europe bodies also often refer to the principle of subsidiarity.

It is most often (statistically) mentioned in the context of the functioning of the European Court of Human Rights.

For example, in its latest decisions regarding Ukraine, the ECtHR mentioned this principle as follows:

– "The court considers, bearing in mind its subsidiary role, that the legal situation of the second and third applicants was different from the situation of the first applicant organization, and they cannot claim that they had expectations..." (paragraph 59 of the Judgement of the case " Transcarpathian Regional Union of Consumer Societies and Others v. Ukraine");

– "The court understands the subsidiary nature of its role and recognizes that it should be careful when assuming the role of a court of first instance when deciding factual issues, if it is not inevitably required by the circumstances of a particular case. Nevertheless, he must conduct a "particularly thorough analysis"..." (paragraph 121 of the Judgement of the case "Lukashov v. Ukraine");

– "... Given the subsidiary nature of the convention system, the ECtHR should not consider errors of factual or legal nature allegedly committed by a national court, except in cases and to the extent that they may violate the rights and freedoms guaranteed by the Convention[2], and when the assessment of national courts is clearly arbitrary..." (paragraph 30 of the Judgement of the case "Stetsov v. Ukraine").

Less often, the principle of subsidiarity is mentioned in documents related to the functioning of such a body of the Council of Europe as the Congress of Local and Regional Councils.

In the Ukrainian literature on municipal law, the principle of subsidiarity was described quite succinctly and succinctly by P.M. Lyubchenko, noting that:

– "the essence of this principle is that the public authority should intervene only to the extent and within those limits, within which society and its group, ranging from individuals to the family, territorial communities and other larger groups, are unable to satisfy their diverse needs. Thus, in accordance with the principle of subsidiarity, it is allowed to transfer powers from a lower-level power to a higher-level power only to the extent that these powers can be better exercised at a higher level";

– "the principle of subsidiarity is the basis of the community model of local self-government, as it actually recognizes that the distribution of powers between state power and local self-government follows the "bottom-up" scheme. The priority here remains the right of the territorial community to decide which range of issues should be left to itself, and which should be transferred to the competence of state authorities".

Conclusion. It is very essential to pay attention to the proposal to combine the Ukrainian municipal reform and the Ukrainian attempts of the raise the effectiveness of the implementation of the ECHR's judgements.

It should be suggested to strive for terminological unification in doctrinal literature.

First, it will facilitate interdisciplinary research.

Secondly, it will provide an opportunity to get rid of the artificial "wall off" from the experience of the EU, and will be another confirmation in favor of Ukraine's choice of the European vector of further state development.

The perspectives of the further researches in this field are based at the two vectors: the municipal vector and the human rights' protection vector.

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Summary

Mishyna N. V. **Decentralization: European court of human rights' judgements implementation.** – Article.

The aim of the article is to propose to combine the Ukrainian municipal reform and the Ukrainian attempts of the raise the effectiveness of the implementation of the ECHR's judgements.

The author argues that nowadays the principle of subsidiarity is quite popular in Ukrainian scientific literature. In addition, it is also a wide-spread topic for the authors of the quasi-scientific articles, which reveal the problems of the organization of public power. This provides the basis for the potential of this principle to be used to the maximum in Ukraine. Therefore, an important scientific direction is to study the content of this multifaceted principle.

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Secondly, it will provide an opportunity to get rid of the artificial "wall off" from the experience of the EU, and will be another confirmation in favor of Ukraine's choice of the European vector of further state development.

The perspectives of the further researches in this field are based at the two vectors: the municipal vector and the human rights' protection vector.

Key words: international law, European law, implementation of judgments of the European Court of Human Rights, reforms and future of regional human rights mechanisms, human rights at local level, local self-government, local and regional authorities.

Анотація

Мішина Н. В. **Децентралізація: виконання рішень Європейського суду з прав людини.** – Стаття.

Мета статті – запропонувати поєднати українську муніципальну реформу та українські спроби підвищити ефективність виконання рішень ЄСПЛ.

Автор стверджує, що сьогодні принцип субсидіарності є досить популярним в українській науковій літературі. Крім того, це також поширена тема для авторів квазінаукових статей, які розкривають проблеми організації публічної влади. Це є основою для того, щоб потенціал цього принципу був максимально використаний в Україні. Тому важливим науковим напрямом є дослідження змісту цього багатоаспектного принципу.

Багато українських теоретиків і практиків займаються проблемами децентралізації, коли йдеться про місцевий рівень, муніципальну реформу. Ці фахівці здебільшого досліджують і практикують муніципальне право та зосереджуються на проблемах муніципального

управління. Принцип децентралізації є «гарячою» темою в українській юридичній літературі. Оскільки в країні триває муніципальна реформа, більш-менш принцип децентралізації є досить популярною темою дослідження.

Водночас багато українських теоретиків і практиків приділяють величезну увагу проблемам виконання рішень Європейського суду з прав людини (ЄСПЛ), особливо останнім часом – оскільки у 2021 році виповнилося 25 років з моменту ратифікації Україною. Конвенція про захист прав людини і основоположних свобод 1950 року.

Автор пропонує прагнути термінологічної уніфікації в доктринальній літературі.

По-перше, це сприятиме міждисциплінарним дослідженням.

По-друге, це дасть можливість позбутися штучного «відгородження» від досвіду ЄС і стане ще одним підтвердженням на користь обрання Україною європейського вектору подальшого державного розвитку.

Перспективи подальших досліджень у цій галузі базуються на двох векторах: муніципальному та правозахисному.

Ключові слова: міжнародне право, європейське право, імплементація рішень Європейського суду з прав людини, реформування та майбутнє регіональних правозахисних механізмів, права людини на місцевому рівні, місцеве самоврядування, місцева та регіональна влада.