

Резюме

Сонюк О. В. Обмеження права на апеляційне та касаційне оскарження рішень адміністративного суду за національним законодавством.

У статті досліджено випадки законодавчого обмеження права на апеляційне та касаційне оскарження рішень адміністративного суду. Основну увагу звернено на необхідність встановлення в КАС України вичерпного переліку ухвал, які підлягають оскарженню окремо від постанови суду. Проаналізовано норми КАС України, що невіправдано обмежують можливість оскарження рішення суду. Також запропоновано ряд змін та доповнень до норм КАС України.

Ключові слова: апеляційне та касаційне оскарження, рішення суду, ухвали адміністративного суду, які підлягають оскарженню, норми законодавства України про адміністративне судочинство.

Резюме

Сонюк О. В. Ограничение права на апелляционное и кассационное обжалование решений административного суда в соответствии с национальным законодательством.

В статье исследованы случаи законодательного ограничения права на апелляционное и кассационное обжалование решений административного суда. Основное внимание обращено на необходимость установления в КАС Украины исчерпывающего перечня решений, подлежащих обжалованию отдельно от постановления суда. Проанализированы нормы КАС Украины, которые неоправданно ограничивают возможность обжалования решения суда. Также предложен ряд изменений и дополнений к нормам КАС Украины.

Ключевые слова: апелляционное и кассационное обжалование, постановления суда, решения административного суда, которые подлежат обжалованию, нормы законодательства Украины об административном судопроизводстве.

Summary

Sonyuk O. Restrictions on the right to appeal and cassation appeal against judgments of administrative courts under national legislation.

The cases of legal restrictions of the right to appeal and cassation against judgments of the administrative court have been researched in this article. Special attention is paid to the necessity of setting in CAPU an exhaustive list of rulings to be appealed separately from court resolutions. The legal norms of CAPU, which unduly restrict ability to appeal against court decision, have been analyzed. The list of amendments to CAPU has been proposed as well.

Key words: appeal and cassation proceeding, judgment of court, rulings of Administrative Court to be appealed, Ukrainian legislation on administrative proceedings.

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I. USTINOVA, I. RIABOVOLLENKO, R. PESTSOV

Iryna Ustinova, candidate of legal science, associate professor of National Aviation University

Iryna Riabovolenko, candidate of philology, senior teacher of Kyiv State Maritime Academy named after hetman Petro Konashevich-Sahaydachnyi

Ruslan Pestsov, candidate of legal science, associate professor of National Pedagogical Dragomanov University

SOME THEORETICAL QUESTIONS OF THE LEGAL CONTENTS OF THE FINANCIAL AND LEGAL DECENTRALIZATION IN UKRAINE

Analysis of recent research and publications. The question theoretically study and definition of a financial or fiscal decentralization engaged in such Western scholars : Tibu, Massgrave, Whats, Kun, Shah, Hafer, Fray and Ihenberg (economists), Agranoff, Vunterberger, Gizevius, Roy, Paneyko (lawyers) and others. In Ukraine, in the present conditions of the idea of fiscal decentralization is especially relevant to learning and adaptation to national economic and financial management systems. The analysis deals with many scientists, including S. Yuriy, N. Bykadorova, A. Kyrylenko, U. Gluzhchenko, O. Sentsova, V. Fedosov, V. Khrestynka, I. Lunina (economists), M. Baymuratova, L. Voronova, I. Golosnichenko, V. Kravchenko, O. Kutafina, O. Lazor, T. Smyrnova, O. Frytskyi (lawyers) and others.

The forming article purposes:

- to determine the definition of “fiscal decentralization” in current conditions of Ukraine;
- to analyze the applicable theories of foreign financial decentralization and spend the ratio of the components of actions in these processes Ukraine;

– to identify opportunities of implementation of fundamentals of fiscal decentralization in the management system of our country by identifying

Now Ukraine is undergoing a difficult, but historically conditioned process of reforming the state apparatus and its mechanism of administration. This significant event was the ratification by Ukraine 16 September 2014 of the Association Agreement with the European Union. Among the priorities of the reform, which will accompany the implementation of the Association Agreement with Ukraine and the European Union certainly is the decentralization of state administration. It is known that the decentralization of authority is the integral component of a democratic society. Decentralization makes for Ukraine due to increased levels of security and rendering state services and standards, removal of economic instability, accelerating social and economic development of the state. All considering, an important conclusion, which focused on academics and practitioners, is that if given the economic and social positive results of numerous decentralized legislative changes. In this way, should examine the economic, financial and legal aspects (including the prospects and effects) of decentralization process in Ukraine, primarily based on an analysis of legislative procedures and implement national legislator regulation of financial decentralization, and also with an allowance for foreign (European) experience.

Thus, the objective of this paper is to identify on the basis of analysis of current theories and issues legal support of the process of fiscal decentralization in Ukraine and the interference of some conclusions about the main trends of changes in the reform of public administration.

In case of state financial management consistently among scientists not only Ukrainian ones sustained debate about which is better, fiscal centralization or decentralization. Answers are designed to give the theory of fiscal federalism. Fiscal federalism is one of the main objects of researching the economy and the government sector reflects the complex scheme of relations between budgets of different levels¹, so for lawyers should create a transparent and well-regulated process control and regulation of these processes. The relationship between the degree of fiscal decentralization and economic growth, scientists from different countries actively research more of the mid- 70s. The traditional theory of fiscal federalism gives recommendations for the consolidation of the various levels of government and certain functions necessary for their implementation of fiscal instruments. The foundation stone of the theory of fiscal federalism is the theory of decentralization: if decentralization does not affect the level of costs, the decision-making on a local social good or better for centralization, or at least it is not inferior in terms of efficiency. Centralization and the related standardization often allow not only to², which is the goal of any business entity.

Critical analysis of the definition of “decentralization” in the works of many scientists, economists and lawyers shows that decentralization is a complex phenomena that make various scientists determine which varies. But, despite different views on the definition of fundamental decentralization is to determine, in the light of the relationships between central and local authorities of their various permissions (tax, political, administrative, etc.), it gives the American scientist Michael Bell. Decentralization by Bell – a way of measuring the size of the national economy transition from a command to a market³. During fiscal decentralization should be understood as any kind of mobilization of financial resources in the budgets of local authorities.

Fiscal decentralization – the transfer of flow of revenue and expenditure of funds to lower levels of authority, while maintaining financial responsibility. Usually, this process is called fiscal federalism, but this concept can apply to the unitary, federal and Confederate governments. Fiscal federalism is also characterized as “vertical imbalance”, where the central government allocates either too much or too little funding for local authorities. It could also be a way to increase the control of the central government at lower levels if they are not linked other types of liability for permissions⁴. Fiscal decentralization can be achieved through the settlement system of charging fees, the establishment of local property taxes and taxes on sales contracts, by getting intergovernmental transfers from central government grants or loans to local. The transfer of funds can be a further obligation to report on their use, or without it.

Fiscal decentralization is classified on the basis of a typology of relative economic model, delegation, devolution and decentralization. The propositions on delegation of permissions of public authorities to local ones involves the transfer of some permissions to local authorities to perform on behalf of the central government, with funding tasks performed within the delegated permissions provided by the government through the allocation of transfers. The delegation obtains at any state of the economy, but prevails in countries with administrative-command model economy where high concentration of financial resources is the state budget, and, moreover, suggests a lack of budgetary self-financing of local authorities and disclosure report execution of the budget in the financing of delegated permissions. Devolution is an intermediate of centralization to decentralization characteristic of the transition period, when local authorities are responsible for funding and providing certain public services within the framework of the state budget financing⁵. Generally, it refers to social needs. When thoroughly analyze the current situation, we can say that it is this period in Ukraine, as social benefits assigned to local budgets, and revenue from complex taxes (taxes on personal income, corporate income tax, customs duties), according to Budget Code of Ukraine⁶, Art. 29.

Devolution in different countries have different lasts a long time, depending on economic development, political and cultural preferences of a country. But the result of the policy of devolution is centralization and decentralization of financial resources at the central or local budgets. Today we hear a lot of scientific opinions of European scientists, the need for such action, but they are controversial nature of discussion⁷. In fact, decentralization involves the concentration of financial resources at the level of local authorities to finance them (authorities) delegated permissions. In addition, the regions should set up special services or bodies, where decision-making involved citizens. In Ukraine such competence with representative bodies of local authorities – village, settlement and town councils and elected village, settlement or city mayor. In economically developed countries, in addition to representative bo-

dies, well developed structure nonparty organizations that are actively involved in managing a territory and can influence the adoption or repeal certain decisions by bodies representative survey of citizens, protests, demonstrations, rallies, etc. As it generally known, decentralization is inherent in countries with developed market economies⁸. Difficult to say such words about Ukraine. Considering theoretical and practical observation, we can talk about the process of decentralization in Ukraine is not a pure and as a part, hybrid. Those permissions granted to local authorities not fully be financed by them, the legislator is aware assigning a large number of intergovernmental transfers (Budget Code of Ukraine. Chapter 16)⁹.

Pursuing a policy of fiscal decentralization or centralization should take into account numerous factors of economic development, including the important role played by the peculiarities of the state political system and historical relations between its different layers. Strengthening financial independence of local authorities is an important task policy of decentralization of state finances in Ukraine¹⁰. Self-governmental sections of the economy should have normal conditions for economic activity and be interested in the efficient use of all kinds of resources, and local authorities – to sustainable economic growth. Local councils in the context of the new policy of decentralization and correct devolution, are to determine the areas of use their budgets cash¹¹. The shortcoming is that although the legislation establishes specific list of expenses to be funded from local budgets, but it is impossible to determine how fixed revenues to local budgets address the needs and in what amounts. This issue requires further a deeper legal registration that bring Ukrainian legislator to greater transparency and clarity in the supplementation of local authorities, and thus will contribute to the development of the institute of state financial control in the sphere as part of a democratic society.

Analyzing the financial policy of Ukraine for the past 20 years, we can not ignore its guidance for fiscal decentralization¹² (that is the concentration at the center of the proportion of financial resources and hence authority). This is assigned to the Constitution of Ukraine, and with the signing of the European Charter of Local Self-Government.

In this situation, it is assumed that the state should be the guarantor of social and economic stability, and can protect the community from the inefficient use of local resources and abuse of local authority. This also applies to Ukraine. We note that the Ukrainian legislator quite successfully and quickly commenced the process. Thus, the direction of Cabinet of Ministers of Ukraine on April 1, 2014 and the draft law of Ukraine “On Amendments to the Constitution of Ukraine (concerning the decentralization of authority)” was submitted for discussion of reform of local self-government and territorial authority organization in Ukraine¹³. In the document became clearer the most acute problems of concern to community leaders and local authorities. They relate to administrative issues, including in the sphere of the budget. Specifically, these are:

- Filling the local budget. They are separate, meaning they are not comprised in the State Budget of Ukraine, in case of shortage of funds for the last intergovernmental fiscal regulation directed intergovernmental transfers in the form of equalization, which is determined by municipal budgets formula method;
- increasing the community permissions can be given opportunities for resource revenues to local budgets. Thus the original communities no financial means to start up certain projects and programs;
- there is no clear definition of subsidiary, as result problems occur at level of the community, district and regional councils which will compete for their separation and ability to manage through the allocation of additional funding, and other¹⁴.

The author considers that a list of potential problems unresolved distribution of authority and finances can lead to the federalization of the country, and this is historically due course of development of the Ukrainian state and not the desire of communities and populations Ukraine.

According to the scientists and experts at leaving in the places from 60 to 80 % of the financial resources we can talk about real decentralization. Provides that the primary stage of solving municipal problems, health care financing, education, social issues, which fall heavily on communities, districts and regions should be carried out through public education, municipal, medical subsidy that is targeted transfers for the specific purpose of spending money¹⁵. It is necessary to support a large number of experts warning that the decentralization of the budget process can lead to imbalance of the whole budget system in the country. So for 2015 in the region left 60 % tax against 30 % who still remained.

However, it should be noted that during the gradual process of fiscal decentralization in 2014–2015 years were amended the Budget Code of Ukraine. As a result, the financial resources of local budgets in 2015 compared to 2014 increased by 34 bln. UAH. (14.7 %) and 22 % reduction in the number of subsidized local budgets¹⁶. The latter fiscal legislative changes will strengthen the material and financial basis of local self-government and local budgets to fiscal autonomy and financial independence, establishing a new mechanism of financial equalization. The positive is that the legislators simplifies the provision of local guarantees and borrowings from international financial institutions, strengthens the responsibility of branch ministries for implementation of state policy in the relevant sector and efficiency of budget funds, improving treasury services budget and provides local budgets the conversation the bank form maintenance of the budget of local budgets and own revenues of budgetary institutions.

We cannot maintain that decentralization is a form of democracy that allows to preserve the unity of the state and its institutions to expand the local government to intensify people to their own needs and interests, narrow the sphere of the state’s influence on society, replacing this impact mechanisms of self-regulation, produced by society, reduce government spending and taxpayers of maintaining the state apparatus¹⁷. According to the author, the right step by Ukrainian legislator was the adoption of the laws “On a voluntary association of communities”¹⁸ and “On Principles of regional policy”¹⁹. These acts are designed to overcome the problem of limited opportunities in their local subdivisions and positively contribute to the planning of infrastructure projects at the local level.

It is not new, and at the same time an approval that the new model of financial security of local budgets and inter-governmental relations Ukrainian experts were developed based on the experience of foreign countries. In addition, was researched the positive achievements of budget reforms in Poland and Slovakia on financial socio-cultural sphere, construction of transfer policy, organization of intergovernmental relations and fiscal equalization mechanisms²⁰.

There are quite alarming findings of experts and researchers in Poland and Slovakia, on the state of local finances in these countries. Suggested that the decentralized system of financial management should be implemented centralizing components.

Ukrainian lawmakers sufficiently used the successful experience of Western countries, so further progress Ukraine to the European Community should be subject to completion of constitutional reform at the level of territorial organization of authority, held in accordance with the European Charter of Local Self-Government transformation of authoritative relations in the country based on the principles of subsidiary and decentralization.

Summary. The foregoing gives reasons to assert that the process of fiscal decentralization Ukraine is quite actively, consistently, while providing sufficient legal regulatory development process, which generally is a positive step in the historical development of Ukraine as the location and state. However, it should be noted that the legal regulation of the financial activities of local authorities in terms of changes in intergovernmental relations in the future needs of development and research, taking into account the existing experience of European countries in order to improve clear financial legal mechanism of control over state and local finances and the entire financial system of Ukraine.

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¹² On approval of the Concept of reforming the local self-government and territorial organization of authority in Ukraine / Cabinet of Ministers of Ukraine; Order Concept of 01.04.2014 number 333-p.

¹³ The official website of the Ministry of Finance of Ukraine [electronic resource] / mode of access: <http://minfin.gov.ua/> / Action Plan to implement the Concept of reform of local self-government and territorial organization of authority in Ukraine from 18.06.2014 number 591-p.

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¹⁷ On a voluntary association of communities: Law of Ukraine of 02.05.2015 p. № 156-VIII / Verkhovna Rada of Ukraine // Law № 155-VIII of 02.05.2015.

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Резюме

Устинова І. П., Рябоволенко І. В., Песцов Р. Г. Деякі теоретичні питання правового змісту і фінансово-правової децентралізації в Україні.

У статті проаналізовані сучасні теорії, що стосуються децентралізаційних реформ різних фінансових систем в застосуванні цього досвіду до України. Виконано аналіз економічних і правових складових фінансової децентралізації державних фінансів України та сформульовані відповідні висновки. Висловлені основні рекомендації по проведенню таких реформ в Україні.

Ключові слова: фінансова децентралізація, бюджетна децентралізація, місцеві фінанси.

Резюме

Устинова И. П., Рябоволенко И. В., Пестцов Р. Г. Некоторые теоретические вопросы правового содержания и финансово-правовой децентрализации в Украине.

В статье проанализированы современные теории, касающиеся децентрализованных реформ различных финансовых систем в применении опыта к Украине. Выполнен анализ экономических и правовых составляющих финансовой децентрализации государственных финансов Украины и сформулированы соответствующие выводы. Высказаны основные рекомендации по проведению таких реформ в Украине.

Ключевые слова: финансовая децентрализация, бюджетная децентрализация, местные финансы

Summary

Ustynova I., Riabovolenko I., Pestsov R. Some theoretical questions of legal content and legal financial decentralization in Ukraine.

The article is analyzed the current theories concerning the decentralization reforms of different financial systems. It was suggested regarding the summaries whether given the economic and social positive results of numerous decentralized legislative changes or not. We substantiated the financial and legal need to adopt laws “On a voluntary association of communities” and “On the principals of state regional policy”.

Key words: financial decentralization, fiscal decentralization, territorial finance.

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К. С. КУЧМА

*Костянтин Сергійович Кучма, здобувач ДВНЗ
«Запорізький національний університет»*

КЛАСИФІКАЦІЯ АДМІНІСТРАТИВНИХ ПОСЛУГ У СФЕРІ ЕКОЛОГІЇ ТА ПРИРОДНИХ РЕСУРСІВ В УКРАЇНІ

Прийняття Закону України «Про адміністративні послуги» стало одним із досягнень проголошеної Концепції адміністративної реформи 1998 року. Закон України «Про адміністративні послуги» визначив новий вектор розвитку сфери державного управління, спрямований на змістовну переоцінку характеру взаємовідносин – «особа-держава». Визначення концепції «служіння» в системі публічно-владних відносин вимагає переосмислення особливостей адміністрування у всіх сферах суспільного життя. На жаль, у межах національного правового поля не визначено сутність адміністративних послуг у сфері екології та природних ресурсів, не сформульовано критерії їх класифікації, але правозастосовна практика свідчить про використання такого терміна. Зокрема, офіційний інформаційний ресурс «Єдиний державний портал адміністративних послуг» поміж інших адміністративних послуг виділяє адміністративні послуги у сфері екології та природних ресурсів¹.

Окремі аспекти проблеми дослідження понятійного апарату адміністративних послуг в цілому розглядали В. Б. Авер'янов, К. К. Афанасьєв, В. М. Бевзенко, Ю. П. Битяк, І. В. Дроздова, В. М. Гарашук, І. П. Голосніченко, С. В. Ківалов, І. Б. Коліушко, Т. О. Коломоєць, В. К. Колпаков, А. Т. Комзюк, О. В. Кузьменко, А. С. Лагода, Є. О. Легеза, П. С. Лютіков, Р. С. Мельник, Г. М. Писаренко, В. П. Тимошук, однак комплексне дослідження критеріїв класифікації адміністративних послуг у сфері екології та природних ресурсів не проводилось, що обумовило актуальність здійснення даного дослідження та стало **метою** цієї наукової статті.

Серед особливостей адміністративних послуг у сфері екології та природних ресурсів виділимо те, що такі послуги надаються державою в особі уповноважених органів. Також серед особливостей адміністративних послуг у сфері екології та природних ресурсів є специфічне коло споживачів таких послуг. Як правило, суб'єктами звернення за отриманням адміністративних послуг у сфері екології та природних послуг є такі особи, що за своєю сутністю є природокористувачами, тобто особами, які на законних підставах володіють природним ресурсом. Наприклад, споживачем адміністративної послуги з видачі ліцензії на видобування дорогоцінних металів і дорогоцінного каміння, дорогоцінного каміння органічного утворення, напівдорогоцінного каміння є суб'єкт господарювання у сфері надрокористування.

– Ознакою адміністративних послуг у сфері екології та природних ресурсів є, як правило, їх платний характер. Наприклад, за видачу спеціального дозволу на користування надрами за результатами продажу на аукціоні встановлено, що розмір плати за надання спеціальних дозволів на користування надрами визначається за результатами проведення аукціону². Початкова ціна продажу дозволу на аукціоні розраховується спеціально уповноваженим центральним органом виконавчої влади з геологічного вивчення та забезпечення раціонального використання надр, виходячи з вартості запасів і ресурсів корисних копалин родовищ або