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New Administrative and Territorial Division of Ukraine – New Challenge for National Interest

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ABSTRACT

In 2020, Ukraine underwent a radical administrative reform. As a result, the number of grassroots administrative units decreased sharply, and some of them ceased to exist. At the same time, old problems and shortcomings of public administration at the local level have not been resolved. The legal status and implementation of this reform in the temporarily occupied territories with special administrative status remains unclear. Instead of solving old problems, the new reform added new ones. Therefore, in the coming years we should expect new changes and adaptation of public administration at the local level. Particularly acute is the issue of delimitation of new raions (districts). An important issue is the transfer of powers from the old to the new local governments. A number of districts have a rather poor configuration and location of the administrative centre. This only complicates management at the local level.

KEYWORDS: Ukraine, administrative reform, regionalisation.

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1. Introduction. Ukraine is a unitary state with the administrative and political division similar to that of Italy, which has autonomous regions in its composition. The present-day administrative and territorial division of the country is determined by Art. 133 of the Constitution of Ukraine (1996). The Article abolished the Soviet system of dual subordination of local councils' executive committees, their administrations and departments. Local councils had been released from the custody of their executive committees. Actually, radical reform transforms of basic level of public governance (Resolution of Verkhovna Rada of Ukraine 17.07/2020 No 807-IX).

2. Proposed Techniques / Algorithms. The present-day administrative and territorial division is the legacy of the Ukrainian SSR. In 1922 the first rural soviets (councils) and raions had been established, in 1924 – the autonomous republic, in 1925 – the selyshe miskoho typu (urban-type settlements), in 1932 – the oblasts (regions). Since then, the number of different units of administrative and territorial division and their subordination has been changing continuously. Up to the present day the Provision “On the order of tackling of the issues in regard to the administrative and territorial division of the Ukrainian SSR” approved by the Decree of the Presidium of the Verkhovna Rada (Supreme Council) of the Ukrainian SSR No1654-X of 12.03.1981, and a series of other Soviet statutory acts regulating the issues of administrative and territorial division are in effect.

Many of them are in conflict with the regulative documents adopted in the years of independence. In particular, under the Constitution of 1996, there are only cities as such in the country, and according to Art. 6 of the Budget Code of Ukraine (No 2456-VI of 08.07.2010) there are cities of regional/republican and towns of rayon (district) subordination, which partially complies with the Preamble of the aforesaid Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR, where the cities of regional/republican and rayon subordination are marked out.

In more detail the competence of different authorities on all levels: regional, district and local is set forth in the Law of Ukraine “On the local government in Ukraine” (1997). The basic concepts of this law are the terms *terytorialna hromada* (territorial community) implying “the inhabitants united by permanent residence within the limits of a village, settlement, city, which are self-dependent administrative and territorial units, or a free-will union of several villages' inhabitants having a single administrative center” and *an administrative-territorial unit* implying an oblast, a raion, a city (town), a city district, a settlement, a village (Art.1). The management of such units is being carried out according to the old Soviet model: there are the corresponding councils of people's deputies and their executive boards. Paragraph 2 of Art. 2 of the given Law directly points to it: “The local government is carried out by territorial *hromadas* of villages, settlements, cities both directly and through rural, settlement, city councils and their executive boards, as well as through the raion and oblast councils representing the common interests of the territorial *hromadas* of villages, settlements, cities (towns)”. All of them act within the framework of the universal legislation of Ukraine.

The up-to-date scheme of Ukrainian administrative and territorial division is represented by four-level hierarchy. Herewith, the same administrative-territorial units belong to different hierarchic levels. This does not facilitate the effective government of the country. Let us analyze the main issues of the present-day administrative-territorial structure of Ukraine

3. Experimental Results. *Special legal status* was formalized in Articles 133-141 of the Constitution (1996) during the years of Ukraine's independence, and worked out in detail in the Laws of Ukraine "On the approval of the Constitution of the Autonomous Republic of Crimea" (No 350-XIV of 23.12.1998), "On the Verkhovna Rada of the Autonomous Republic of Crimea" (No 90-98-BP of 10.02.1998), "On the local government administrations" (No 586-XIV of 09.04.1999), "On the local self-government in Ukraine" (No 280/97-BP of 21.05.1997), "On the capital of Ukraine, Hero City Kyiv" (No 401-XIV of 15.01.1999), and in the series of other legislative acts of Ukraine. It is necessary to notice that in accordance with par.3, art.1 of the latter Law of Ukraine Kyiv city hosts the authorities of another administrative unit, Kyiv oblast. Since according to the Constitution of Ukraine the city of Kyiv and the Kyiv oblast are separate peer (having the same rights) units of administrative and territorial division, moreover, the city of Kyiv has special status – the status of a state capital, and the powers of its administration are presented in detail in the Law "On the capital of Ukraine, Hero City Kyiv", the placement within the city limits of the state administrative bodies of Kyiv oblast and Kyievo-Sviatoshynskiyi raion is a unique phenomenon of administrative division for Ukraine's regions. In each of these regions its administrative centre is situated within the limits of the region itself, and not on the territory of another administrative unit. However, such was the widespread practice in the Soviet administrative-territorial structure. At the same time, up till now, the Law concerning the status of Sevastopol city, provided by Art. 133 of the Constitution of Ukraine, is not adopted. Thus the administration in it is carried out in the framework of general legislation of Ukraine.

There is a *legal collision* in Ukraine concerning urban-type settlements, the existence of which is provided by the Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR "On the order of tackling of the issues in regard to the administrative and territorial division of the Ukrainian SSR" (No 1654-X of 12.03.1981), but they are absent in the list of units of the administrative-territorial structure of Ukraine (Art. 133 of the Constitution). Their actual legal status remains vague. The Verkhovna Rada of Ukraine applies the term provided by the given Article of the Constitution – settlement – to the corresponding new urban settlements, but the aforementioned Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR is still in effect in Ukraine, thus the list of the administrative-territorial units of the country classifies *urban-type settlements* and *settlements* separately, implying by the latter *rural settlements*. There are 885 urban-type settlements in Ukraine today after 2020.

Specific legal status in accordance with the legislation of Ukraine has the exclusion zone (Kyiv oblast). Its existence is not provided by Art. 133 of the Constitution of Ukraine. Nevertheless Art. 8 of the Law of Ukraine currently in effect "On the legal regime of the territory contaminated with radiation as a result of the Chernobyl accident" (No 791a-XII of 27.02.1991) establishes that this Zone, as well as the compulsory evacuation zone, is managed by the Zone Administration (a special subdivision of the State Service of Ukraine in the Issues of Emergencies)¹ [1]. The given body

¹ At present it is subordinated to the State Agency of Ukraine on the Exclusion Zone Management.

of central power determines economic activity as well as the schedule of visits and lodgement within the limits of the exclusion zone and the compulsory evacuation zone, covering the territories of separate localities in the northern part of Kyiv and Zhytomyr oblasts (the list of the settlements and the administrative and territorial regions is given in Appendix 1 to Resolution of the Cabinet of Ministry of the Ukrainian SSR No 106 of 23.07.1991). The actual administrative status of towns of oblast subordination Pripyat and Chernobyl (Kyiv oblast) that are located within the exclusion zone is not officially defined. There are no town councils in them, the establishment of which is provided for the towns of oblast subordination by the Law of Ukraine “On the local government in Ukraine” (1997).

“Dead” settlements are the settlements, which have not been deregistered, but are depopulated. Except the settlements in the compulsory evacuation zone, Ukrainian rural settlements voluntarily abandoned by their population are classified as “dead” too. According to the latest published official data (01.01.2007), there were 282 of such villages in the country. Depopulation and intensive domestic migration processes during the years of independence still intensified the process of “dead” settlements’ emergence in Ukraine. Thus, if in 1990 the Crimean oblast took the leading position in regard to such settlements (113), in 2007 Sumy oblast took the lead (45 depopulated villages). Among them there are former workers’ settlements situated nearby unfinished construction sites as well as military camps abandoned after the withdrawal of troops.

Several *secret military camps* still de facto exist outside the standard administrative-territorial structure. For example, the town of Makarov-1 is in fact in composition of Kyiv oblast, although there is no the mention of it in the list of the oblast’s administrative units on the Verkhovna Rada’s web-portal and in the official statistical bulletins of Kyiv oblast. Its administrative-territorial status is defined by the Resolution of the Central Electoral Commission of Ukraine No 443 of 09.12.2009 “On the establishment, as an exception, of special electoral precinct No 120 of territorial electoral district No 92 for the Presidential Elections to be held on January 17, 2010 on the territory of military unit A2192” [2]. Today (Resolution of Verkhovna Rada of Ukraine 05.07/2012 No 5173-VI) the town is official urban-type settlement Horodok (Radomyshl raion of Zhytomyr oblast).

Extraterritorial status actually belongs to a part of Ukrainian territory, occupied by the Russian Federation’s Black Sea Fleet since 1997. The given legal regime was extended “for twenty five years after May 28, 2017” in accordance with Par. 1, Art.1 of the “Agreement between Ukraine and the Russian Federation on the issues of the Black Sea Fleet presence in the territory of Ukraine” (21.04.2010). In many respects this legal regime is similar to that of European settlements in China before 1946. 3. However it contradicts Art. 17 of the Constitution of Ukraine (1996), which directly states: “The presence of foreign military bases is unwarrantable in the territory of Ukraine”. The existence of such military bases was legalized by Par.1 4 of Section XV of “Transitional regulations” of the Constitution: “The use of situated in the territory of Ukraine military bases for temporary stay of foreign military formations is possible on a rental basis in accordance with the international agreements of Ukraine ratified by the Verkhovna Rada of Ukraine”. At the same time the Constitutional Court of Ukraine by its ruling refused to consider the compliance of the Constitution of Ukraine and international agreements between Russian Federation and Ukraine which regulate the presence of Russian Federation’s Black Sea Fleet in the territory of Ukraine (Decrees No 65-

y/2000 (26.12.2000) and No 39-y/2010 (09.06.2010). According to the laws currently in effect in Ukraine, thereby, there is no warrant to declare the agreements invalid. It will be observed that on the official site of the Verkhovna Rada, where the official texts of Ukrainian legislative acts are presented, the list of the Russian Federation's Black Sea Fleet dislocation sites is absent, which makes it impossible to indicate their administrative and territorial subordination. Partially it is disclosed in Paragraphs b and c of Art. 2 of the "Order of intersection of the state border of Ukraine by military men, warships (security ships) and aircrafts of the Russian Federation's Black Sea Fleet dislocated on the territory of Ukraine" (Decree of the President of Ukraine No 706/2008 of 13.08.2008). This list, besides the bays and airports within the limits of Sevastopol city, includes the Feodosia commercial port (the Autonomous Republic of Crimea).

The need to determine the precise limits of the land plots and the objects of immovable property located on them and used by the Russian Federation's Black Sea Fleet in the territory of Ukraine was mentioned for the first time only in the Resolution of the Cabinet of Ministers of Ukraine No 246 of 03.03.2006, whereas they had been granted for use much earlier in accordance with Par. 2 of the "Agreement between the Russian Federation and Ukraine on the Black Sea Fleet" (09.06.1995). The aforementioned document was the first one to formalize the establishment of Russian Federation's Black Sea Fleet and its dislocation at the military objects of the former Black Sea Fleet of the USSR in the territory of Sevastopol city and the Autonomous Republic of Crimea. Moreover, in accordance with the "Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the mutual rights recognition and the regulation of the relationships concerning the property of the Russian Federation's Black Sea Fleet on the housing resources and the objects of the social purpose in the places of its military formations dislocation on the territory of Ukraine" (16.03.2000), the residential constructions and social amenities in the territory of Sevastopol city and urban-type settlement Kacha (a district of Sevastopol), indicated in Appendix 1 to the given Agreement are in full property of Russian Federation's Black Sea Fleet. As a result of the annexation of the Crimea peninsula, this territory has the status of temporarily occupied.

Temporary special legal status of the local government was in force from 2001 up to 2006 [Art. 3 of the Law of Ukraine "On the State legal experiment of the local government development in the town of Irpin, the settlements of Bucha, Vorzel, Hostomel, Kotsiubynske of Kyiv oblast" (No 2352-III of 05.04.2001)] on the territory of the established Irpin region, that included the above mentioned administrative units (Art. 1 of the given Law of Ukraine). At this, urban settlement Kotsiubynske, a part of the Irpin Town Council, passed in subordination to the State administration of the capital in accordance with Par. 3 of the Resolution of the Cabinet of Ministers of Ukraine No 522-p of 15.12.2005, though it was not included in composition of the capital's administrative and territorial structure. Thereby, a legal collision concerning the powers of the authorities and their subordination in the given urban-type settlement was created.

Enclavement implies entire encirclement of an administrative unit by another administrative unit. For example, the town of Slavutych, which is a part of Kyiv oblast, is an enclave surrounded by the territory of Chernihiv oblast. Ochakiv raion of Mykolaiv oblast is divided by the waters of the Dnipro estuary, as well as the settlement Bile by the Black Sea waters, Serpent Island is separated from the essential territory of the Vylkovo Town Council of Kiliia raion of Odesa oblast.

Administrative sub-regionalization implies the establishment of departmental structural divisions of inter-district subordination. A series of governmental departments have no structural subdivisions of their own in each administrative unit of Ukraine. Instead, inter-district centres are established, which are functional in the territory of several administrative units. Such division is inherent, e.g., to the territorial bodies of the State Tax Inspectorate, the State Office of Public Prosecutor, the Security Service of Ukraine and to many other departments and institutions. Thus, each institution has its own zoning, which testifies to the absence of coordination in the given process. This causes a situation when the population has, in order to obtain various social services, to go to different localities, which are often situated in diametrically opposite parts of the region. Whereas, the issue of the establishment of the unified layout of such inter-district structures and the appointment of sub-regional management centres on their basis is long overdue. At that, not only departmental, but also the territorial interests should be taken into account, because in the absence of any bodies of the departmental management in a raion centre deprives it of any prospects of future development. In our opinion, the Christaller-Lösch Central Place Theory should provide the basis of the prospected sub-regional zoning.

Aggregation/fragmentation and inclusion (merger) in composition of an administrative unit of another administrative unit is a typical phenomenon in the practice of management in Ukraine. Such actions are warranted only for territorial *hromadas* and solely on the voluntary basis, in contrast with the Soviet administrative law, in accordance with Ruling of the Constitutional Court of Ukraine No 12 of 18.06.2002 and Art. 140 of the Constitution of Ukraine (1996). However, if rural settlements' rights for such consolidation are warranted by Art. 140 of the Constitution, there is no mention in it of urban settlements' rights. Besides, the legal procedure of aggregation of administrative and territorial units has not been established, as well as the mechanism of cessation and delegation of powers etc. All the enumerated conditions cause big uncertainty in the given issue, which does not facilitate the agglomeration of administrative units, especially urgent within the limits of actually existing urban agglomerations, divided by administrative borders. That was why de-merger of Ukrainian cities and abolition of "administrative matryoshka" hardly ever took place. The reorganization of such cities needs to undergo the stage of transition to the planned as early as in the Soviet time three-fold scheme of administrative management.

The mentioned above legal experiments concerning the establishment of the Irpin region and the inclusion of urban-type settlement Kotsiubynske in composition of the Kyiv City Council as well as those concerning the assimilation of the actual city limits with their administrative limits have not progressed any further. The latest merger of localities into the structure of a city concerning Kryvyi Rih and Boryspil, the towns of regional significance took place in 2002. Thus, only one city agglomeration took place: Ingulets, the town of raion subordination, was included into the structure of the city of oblast subordination, Kryvyi Rih (2002). As Table 2 presents, only seven mergers of urban-type settlements with other settlements and towns took place. Altogether, during the years of independence of Ukraine 73 settlements were

integrated in composition of other settlements (Table 1). Hence, the issue of the inclusion into composition of the cities of Ukraine of all adjacent to them urbanized territory has not been solved yet.

Table 1. Administrative merger and the inclusion in composition of cities and urban-type settlements in Ukraine (1991-2019)

Region of Ukraine	Type of the joining settlement			
	settlement	village	urban-type settlement	town of raion subordination
Autonomous Republic of Crimea		1		
Dnipropetrovsk oblast		3	3	
Donetsk oblast		1		1
Zhytomyr oblast	1			
Zaporizhya oblast		2		
Ivano-Frankivsk oblast		3		
Kyiv oblast		2		
L'viv oblast		2		
Mykolayiv oblast		4	3	
Sumy oblast		2		
Ternopil oblast		1		
Kharkiv oblast	2	30		
Cherkasy oblast		2		
Chernivtsi oblast		3		
Chernihiv oblast	1	4		
City of Kyiv			1	
Total	4	60	7	1

Compiled and calculated according to the data of the Verkhovna Rada of Ukraine [3].

Change of the legal status of an administrative unit is also the heritage of the Soviet time. Two opposite legal processes can be pointed out to: the deregistering/liquidation of a certain administrative unit and the granting of a higher administrative status to it (Table 1). The liquidation was applied exclusively to rural councils and implied the process of deregistering of depopulated settlements during the years of

independence. The granting of a higher administrative status predominantly concerned urban settlements (Table 1). For example, in Kyiv oblast in 2007 urban-type settlement Bucha of the Irpin Town Council was granted the status of a town of oblast subordination, and in 2010, Obukhiv, the town of raion subordination, received the status of a town of oblast subordination. The appropriate decisions are taken by oblast councils and the Verkhovna Rada of the Autonomous Republic of Crimea, and approved by the relevant Resolution of the Verkhovna Rada of Ukraine.

Changeability of the administrative and territorial division. During the years of independence comparatively moderate changes of the administrative and territorial division took place in Ukraine, with the exception of the establishment of the Autonomous Republic of Crimea (1992), and the granting in 1999 of a special status to the capital, Hero City Kyiv (Table 1). Only Pidhaitsi raion in Ternopil oblast and Hertsav raion of Chernivtsi oblast were established in 1991, and only one raion center was transferred in Poliskyi raion of Kyiv oblast in 1996. The greatest changes concerned changes delimitation of the territories of cities of oblast subordination, as well as caused by this changes of the administrative limits of village councils (Table 1). One of the reasons of delimitation or the liquidation of administrative units is the deregistering of localities in their composition. According to the data of the Verkhovna Rada of Ukraine, during the period of the country's independence (1991-2019) such a decision was taken in regard to 505 localities, and only ten of them had been urban-type settlements.

Uncertain character of authority. The delimitation of councils' authority, the powers of their executive boards and the state administrations of all levels remains the burning issue of the administrative and territorial management. In the 21st c. a lot of oblast and city councils at times made political decisions outside their scope instead of tackling the issues of everyday life of their areas. This phenomenon vividly manifested itself during the Orange revolution (2004), when many of the local authorities adopted illegitimate acts in regard to the acknowledgement of the legitimacy of one of the presidential contenders. New hromada created instead of village and settlement councils do not have any legally established boundaries at all.

4. Discussion and Conclusion. Numerous conflicts within the system of management are caused by the above mentioned problems of the administrative and territorial division. The society and the state have been aware of them since the first years of the Ukrainian independence. New administrative reform on the national level worked created new problems. Radical reform of the administrative-territorial system with the abolition of established units at the village - district - city level has exacerbated the problems of government. The introduction of communities that do not have the financial resources for their development raises the question of the need to fill their budgets. A sharp reduction in the number of districts, the abolition of the status of a city of regional significance has led to a sharp decrease in the availability of local government services to the majority of the population of rural remote areas.

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