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SUBSIDIARITY PRINCIPLE: THEORETICAL AND METHODOLOGICAL POTENTIAL OF FEDERATIVE STRUCTURE OF A STATE

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SUMMARY

The essence of subsidiarity principle as one of theoretical and methodological means of legal support in functioning of the hierarchical management structure of the federal State system and some State members of the European Union (EU) is substantiated. The particularities of subsidiarity principle within the legal framework of the EU as a supranational structure are also considered.

Key words: subsidiarity principle, federalism, States members of the EU, delegation of power (authority).

ПРИНЦИП СУБСИДИАРНОСТИ: ТЕОРЕТИКО-МЕТОДОЛОГИЧЕСКИЙ ПОТЕНЦИАЛ ФЕДЕРАТИВНОГО УСТРОЙСТВА СТРАНЫ

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АННОТАЦИЯ

Обоснована сущность принципа субсидиарности как одного из теоретико-методологических средств правового обеспечения функционирования иерархической властной вертикали государственного федеративного типа, отдельных государств-членов ЕС. Рассмотрены также особенности действия принципа субсидиарности в правовом поле Европейского Союза как наднационального образования.

Ключевые слова: принцип субсидиарности, федерализм, государства-члены ЕС, делегирование (передача) полномочий.

Introduction. Subsidiarity has been a multiform notion throughout the history of politico-legal conception with a classical and modern interpretation, seen as an idea and a principle. Apart from legal meaning, subsidiarity has clear philosophical, religious, politico-logical and sociological grounds.

The nature of subsidiarity as an idea in its politico-legal sense has not only changed with time acquiring clearer meaningful, functional and role qualities in different philosophical and catholic socio-christian approaches but also served as theoretical and methodological means of formulation and discussion of many questions related to social development, historical and philosophical comprehension of these questions and their regulatory and legal realization. The idea of hierarchy of structure, priority of rights of lower classes over the rights of higher classes, delegation of powers etc. as effective means of control and governance was defining in almost all philosophical, politico-legal theoretical and conceptual structures – from times of Plato till times of Hegel, in neo-thomist Christian teaching of modern catholic church, principal

bases of legal ideology (and practical experience in its realization) of the unified Europe.

It goes without saying that the question of federalism can be seen as a defining problem of European state-building because being a form of state system it guarantees successful functioning and development of most states on the European continent. However, federative structure is related to many risks such as regionalism, separatism etc. At the same time it is necessary to keep in mind that despite obvious challenges and dangers theoretical reasoning of federalism nature will be expanding as well as the use of possibilities of the above-mentioned politico-territorial structure in the world practice.

Rapid pace of social processes globalization, increase in cooperation, interdependence of countries, search of optimal ways to future, chosen goals of social development give additional characteristics of actuality to federative politico-legal unions in terms of taking into consideration the possibilities of subsidiarity principle [1, p. 128–169]. Taking into account the fact that even some unitary states

use the federalism principles more often in daily practice of state life, it becomes evident how important it is to learn the rules and particularities of development of this form of political structure in state-building of foreign states.

Initial premises. The works of following people contain separate aspects of clarification of subsidiarity basis as a principle of social organization and governance, formation of multilevel political relationships and strengthening of multilevel democracy, strengthening of subsidiarity culture in activities of public power organizations: M.O. Baimuratov, O.V. Batanov, Yu.O. Voloshyn, L.A. Luts, V.I. Muraviov, M.P. Nediukha, N.M. Onishchenko, T.V. Panchenko, B.M. Topornin and others. But there was no complex research of theoretical and methodological potential of subsidiarity principle and particularities of its functioning under the conditions of federative structure of a state, supranational and intergovernmental politico-legal institutes.

There is a separate group of researches that contains works of foreign authors dedicated to explanation of the basics and sig-



nificance of subsidiarity principle in social teaching of catholic church (M. Clement, J. Komonchak, J. Maritain, Ch. Milon-Delsol, A. Fournas and others), European federalism (J. Althusius, J. Delors, John Locke, Charles-Louis Montesquieu, Jean-Jacques Rousseau, Ph. Pochet, Pierre-Joseph Proudhon, G. Strozzi and others).

As for national literature, the works on problematics that is directly related to subsidiarity as an idea and principle of politico-legal science appeared only starting from the latest decade of the last century and it's related to conclusion of Maastricht Treaty (as of 1992) and creation of the European Union.

Prevailing topics of science researches on the above-mentioned problematics are politico-logical and legal researches of subsidiarity principle that was reflected in European and international law. Meanwhile historical and theoretical legal bent of development of meaningful aspects of process of evolution of the above-mentioned idea, realization of subsidiarity principle as a mechanism of interaction of equal structures of society and state functioning, particularities of interaction process of the center and regions has never been a subject of separate independent researches and has never been clearly explained in the works of national historical and theoretical literature.

Goal of this article is foundation of theoretical and methodological potential of subsidiarity principle and particularities of its functioning under the conditions of federative structure of a state.

Presentation of the main material.

Classical understanding of subsidiarity basics in hierarchical politico-legal structures has to do with the specificity of distribution of powers according to the criterion "from the top – downwards" based on general and equal rules for all subjects of power vertical [2, p. 10–11].

Modern understanding of subsidiarity expects delegation of powers according to the criterion "from below – upwards" as specification or concretization, complement of current authorities [2, p. 11], for example modern practical experience of States members of the European Union (hereafter, States members of the EU) in terms that appeal to possibilities of the above-mentioned principle can have several explanations: a) similarity of subsidiarity principle requirements

to ascertained process of distribution of powers in federal states – between center and its components; б) impossibility of excess centralization of power "above"; в) effective opposing to processes of possible chaos of power, complexity of process related to taking decisions, copying of the same administrative functions at different levels of power vertical, random distribution of rights and responsibilities between institutes of the European Union [3, p. 244].

Subsidiarity principle unambiguously defines that its requirements can't be applied to functioning of hierarchically built structures where there's no common interest that unifies structures. In such cases it's all about simple (arithmetical) complementarity of interests that can't be contradictory or at least contradicting.

However, if there are competitive relationships and they can't be reconciled in accordance with some tradition, multilevel powers of hierarchical structures that has a certain goal should be created – legally defined powers, including those that were added to the previously given (distributed) powers, of the upper level and powers of those that have lower place till the lowest level(s).

At the same time the "borders" for a state interference are defined by the level of development of society and its fundamental principle – a human, the guarantees of human's rights and freedoms, environment for functioning of politico-legal institutes as means of communication and control over performance of state and its officials. Expanding the borders of their competence and therefore their independence, a person makes the "territory" of state influence smaller. Nevertheless, the constant presence of a state, its ability to act according to the principle of complementarity has not less importance within the relationships "person – society – state". Therefore, a subsidiary state is a state that interferes in society life only under the conditions of exhausted or insufficient potential (self-organizational, material, financial etc.) in order to solve the problems that arose at a certain level of governance hierarchy.

Based on the experience in activities of the EU, practical implementation of subsidiarity principle, political integration can be deemed successful under condition that activities of international institutes take into consideration sover-

eign interests of States members of the EU by taking part in the work of state authorities and local government administration without questioning state sovereignty of every separate state.

Subsidiarity principle becomes means of delegation and coordination of interaction of interlevel powers of hierarchically built structures according to the requirements of national law, standards of law of the European Union and regulatory and legal acts of States members of the European Union. The mechanism of realization of subsidiarity principle requirements works at least in two main cases that can be considered as well-established and traditional for the countries of the European Union:

- a) lack of sovereign powers of States members of the EU for effective solution of problems that become exterritorial;
- b) necessity of complementation/concretization of exclusive powers of the institutions of the EU initiated by its sovereign members.

Looking at such understanding, subsidiarity principle contributes to improvement of hierarchical politico-legal forms of interaction of center and its components (both horizontally and vertically) while being one of the additional forms of creation of legally set standards and their realization according to the specific historical conditions, goals of cooperation, prospects of development. A certain exception is relationships of a state and a citizen as well as challenges, risks and dangers as a subject of reaction with regard to realization of subsidiarity principle requirements at the supranational level that are related to assertion of rights and freedoms of a person, their legal interests according to the constitutional regulations of one of the countries-members of the European Union.

The mentioned particularity of subsidiarity principle eliminates its contradictory, double characteristics as it is sometimes mentioned in the scientific literature: according to its original and therefore determinant basics, the mentioned principle is complementary, i.e. it contributes to certain precision according to its nature and taking into account the tasks on implementation of effective functioning of hierarchically built structures of power. In this sense the subsidiarity principle more serves as means of search of adequate politico-legal answers to the



problems of powers distribution, development of mechanism of formation and functioning of self-sufficient hierarchical structures of different levels both on national and supranational levels.

In general the nature of relations between a federation as a type of state system and subsidiarity principle is defined by many politico-legal circumstances. The most important are the following conditions: a) by fully distributing some powers to the subjects of federation, the government of a federative state should consider real possibilities (personnel, organizational, financial etc.) for development of the regions; b) distribution of powers is done by subject of federation in the name of the central federal government that is the Council of Europe [4]. The above-mentioned message can cause increase in risks of conflictogenity in relationships between different subjects of policy, including the regional ones, that can be solved by creation of multilevel "spheres of governance".

It is known that the objective precondition for formation and development of such phenomenon as federalism is decentralization that is understood as politico-legal process of delegation of powers or responsibilities from central government to local administrations in order to optimize solution of problems of nationwide importance and to realize regional and local programs. Decentralization is also seen as a structure element of subsidiarity principle. In some cases the idea of subsidiarity in its traditional meaning can be treated as close to the decentralization [5]. Decentralization expects recognition of regional units as legal entities of territorial self-government that significantly differ due to their cultural, economical and political conditions [6, p. 96].

Implementing the policy of decentralization, the State provides in particular the improvement of administrative and territorial system to give the local authorities the right to resolve economical, cultural and other territorial communities' problems. In fact, it refers to the processes that take place within the unitary model of the state-building, since virtually every country has some territories that differ significantly from each other. These differences concern natural and climatic conditions, history, ethnic composition of the population, lan-

guage, culture, religion, etc. Taken together, they lead to the formation of quality identity of defined territory. According to the nature of the relationship between the regions, as well as their historical role in the process of state-building, state and regional policies should be formed. At the same time, the level of awareness by regional and local leaders of their importance and politico-legal responsibility is becoming very important.

According to subsidiarity principle's requirements the decentralization has a number of substantive issues: regulation of acceptable level of power distribution (local, regional or federal); legislative implementation (institutionalization) of the level of power of each institution at each of the above-mentioned levels; determination the nature of politico-administrative relations between the central Government and federal entities as well as politico-legal system of relationship between the above-mentioned entities. As the European experience shows, these problems tend to be increased in the case of their lack of timely decision-making and can provoke various separatist movements.

Absolutization of a particular form of state administration doesn't provide a means of ensuring this effective administration. Balancing the mechanisms of centralization and decentralization is required, which allows to implement the nationwide interests on the one hand, and on the other - to take into account public rights and legal interests of federative entities.

There is no a regional policy that can achieve accelerated (enhanced) economic growth or increase the population's income of backward regions. Effective implementation of regional policy means largely depends on the absorptive capacities of regions and territorial communities as the ability of effective use of given powers and resources.

According to historical experience, the processes of deepening regionalization in some cases can lead to the beginning of federalization of state system, while in other situations there aren't any above-mentioned dynamics. The main reason for this is that in the case of decentralization, the direct exclusion of state authorities as a legal entity takes place in favor of another legal entity - a local management team that also can

be a commune, a department or a state institution. At the same time, it does not mean that the decentralization of power will be transformed into the federalism. The state policy in administrative and territorial structure implies the need for an optimum combination of centralization and decentralization in the process of implementing public power and taking into account the demographic, cultural, linguistic and other particularities of regions and localities. It also should promote the rational distribution of productive forces, infrastructure development, maximum maintenance of state authorities to people, develop appropriate conditions and opportunities in order to provide the public with socio-cultural, personal and administrative services. It means that the administrative and territorial unit is one of the most important elements of public power's formation which is crucial for the effective and adequate state policy throughout the country. Consequently, the reformation of administrative and territorial system is to optimize the system of territorial management, to have good relations between administrations at different levels, to raise the population's standard of living in each locality.

Recently, the term "decentralization of power" as a means of management is based on the distribution of powers by central territorial Government directly to these territories in order to enhance the federative structure of a state. The state, through the decentralization, ensures the integrity of the country by improving rights and obligations, powers and responsibilities of its territories [7].

Conclusions. The informative characteristics of subsidiarity principle, its theoretical and methodological potential provide for the possibility of formation of dynamic social relations, multi-level power structure, ranging from local to federal, inter-state or supranational powers.

The main advantage of using subsidiarity principle in its unity with constitutional laws includes the possibility of having the management impact on the level that is the best suited to the optimum solution of the problem that is under consideration. The advantages of subsidiarity, at least in its classical sense, are based on the fact that this principle is capable of: a) being presented as the constitutional principle of separation of powers between



different managerial levels; b) protecting the following levels from the excessive centralization; c) promoting democracy in a multi-level government (management) system – a society.

Consequently, subsidiarity principle, “federalizing” the political process in the States members of the EU, contributes simultaneously to the withdrawal of a state on the international legal level, forms a higher degree of power, thereby affirming the indivisible meaningful and functional unity in various vertical directions – “from the top – downwards” and “from below – upwards”.

The content and possibility of subsidiarity principle can only be realized in a context of decentralization of power. The last one, as is known, involves solving problems at the place of their occurrence.

The effectiveness of subsidiarity principle is associated with the possibilities of its application in a way of optimizing the relations of interrelated centers of power, and subsequently, with the direct implementation of its substantive legal requirements. The theoretical and methodological potential of subsidiarity principle allows: a) to ensure the legal unity of multi-level federal power, that is hierarchical by nature; b) to help to unify goals and directions, as effective management of society; c) to ensure institutional and legal unity of federative members (entities) and structure of a state.

The above-mentioned information is added with a certain limitation of the traditional understanding of subsidiarity as Delegation of powers by federal powers to the regions (federative members) as well as its modern application that is against the individual States members of the EU and is as a supranational formation. Under such conditions, the system of powers, its unity and separation, is presented as complementary and subsidiary with the appropriate use of the leverage of checks and balances.

In this regard, at the level of European Union policy, the understanding of subsidiarity principle as providing the legal means to give the priority to public initiatives, local government administration, comparing with government authorities (at the level of individual States members of the EU) or federal power of the EU deserves attention. Consequently, this principle involves providing, at least

in the implementation of social policy, the legislative regulation of interaction of governmental and non-governmental institutes, with the latter priority. It can be considered as an effective legal way to ensure the social civil society initiatives support.

In inter-State relations the subsidiarity principle, being consistently implemented in the legislation, has the potential to advance despite of its complementary status, the meaningful definition, structure and nature of integration processes at different levels - from intersectional to supranational with the federal or confederal entity on the top. However, it is indicative that disregarding this principle's requirements has the effect of unification, simplification and even recentralization that is governed by unified center and has an inevitable impact on the efficiency of its implementation. In this sense the EU is a relevant example, where subsidiarity principle is gradually taking the real features of politico-legal means of management without being unequivocal.

Lack of clear determinate meaning of subsidiarity principle allows each State member of the EU to interpret it according to their national particularities which determines universality and support on the one hand, and on the other hand – reducing the pressure, the neutralization of possible cases of dissatisfaction, for instance, in the case of increase in supranational trends in the European Union policy. For example, the United Kingdom of Great Britain considers the subsidiarity principle as politico-legal means of defense of national sovereignty and limitation of undesirable (from the point of view of the UK) involvement in the affairs of other States members of the EU while this principle allows official Brussels to implement the policy of federalization of the EU.

The dark side of this process is that it can increase conflicts in relations between the States members of the EU.

References:

1. Гавриленко І.М. Соціальний розвиток : навчальний посібник / І.М. Гавриленко, П.В. Мельник, М.П. Недюха. Київ : “МП “Леся”, 2001. 484 с.
2. Недюха М.П. Принцип субсидіарності: класичні та модерні інтерпретації / М.П. Недюха,

М.Ю. Савіовський. *Наукові записки Інституту законодавства Верховної Ради України*. 2010. № 3. С. 9–14.

3. Топорнин Б.Н. Европейское право : Учебник. Москва : Юристъ, 1988. 456 с

4. Заблоцька Л.Г. Політико-правові аспекти діяльності Ради Європи : Навчальний посібник / Л.Г. Заблоцька, Л.Л. Федорова, Т.І. Шинкаренко. Київ : “Фенікс”, 2007. 224 с.

5. Territoires et subsidiarités: l'action publique locale à la lumière d'un principe controversé / sous la dire. d'Alain Faure. Paris, Montréal : L'Harmattan, 1997. 307 p.

6. Томпсон Е. Регіони, регіоналізація та регіоналізм у сучасній Європі. *Глобалізація. Регіоналізація. Регіональна політика*. Хрестоматія з сучасної зарубіжної соціології регіонів / Укладачі Кононов І.Ф. (наук. ред.), Бородачов В.П., Топольськов Д.М. Луганськ : Альма-матер-Знання, 2002. С. 95–110.

7. Субсидиарность: новые тенденции устойчивого развития регионов. URL: www.dialogs.org.ua

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