

III. ТРУДОВОЕ ПРАВО И ПРАВО СОЦИАЛЬНОГО ОБЕСПЕЧЕНИЯ

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SOCIAL COMPONENT OF AUTONOMIZATION IN EUROPE: LEGAL ASPECTS

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Introduction: *the article is devoted to the autonomization process (gaining of ethnical and territorial autonomy) in modern Europe and relevance of the social component in this process. **Purpose:** to analyze the significance of the social component, considered under this study as vesting autonomies with power to carry out social policy and providing them with the relevant financial opportunities in the course of decentralization and devolution. **Methods:** the methodological framework of the research is based on a set of methods, including universal, general scientific methods and also comparative law and technical methods. **Results:** various models of autonomization in Europe show various strategies of regional and/or ethnical elites. The models considered in the article are characterized with the elites' focus on gaining a high degree of autonomy and its legitimation (decentralization without breakup of the state, devolution without revolution). Though political ambitions, ethnical and regional identity play their significant part, socio-economic factors, in general, and the autonomization social component, in particular, determine this process to a considerable extent. The European models of autonomization do not exemplify political ambitions being satisfied at the expense of social policy curtailing.*

Keywords: autonomization; decentralization; devolution; social policy; European Union law

Introduction

Ethnical territorial autonomy is often considered as the result of consensus between authorities of different levels, elites, ethnical groups, which is

characterized by establishment of joint power mechanisms for relaxation of conflict potential in ethnically diversified societies [6; 8; 24].

Autonomy as the basis for conflict management and balance achievement has taken a strong central position, according to a large number

of scientists working in the field of interethnic relations [8; 15; 23; 1].

The institutional structure of autonomy should be well thought-out and legislatively enshrined so that it could promote balance achievement instead of a new wave of separatism (or secessionism as a movement for the autonomy separation from the state).

Legal basis for autonomization in Europe

At the same time, the EU founding documents only partially cover the issues of peoples and ethnical communities' rights, giving preference to the socio-economic development and integration [4; 9; 13]. For example, Article 3 of the Maastricht Treaty stipulates that the Union's aim is "to promote peace, its values and the well-being of its peoples"¹. The preamble of the Charter of Fundamental Rights of the European Union, dated 2000, states that "the Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe"². However, further provisions on the Union being vested with powers or competence only mention member states. As a comparison, in the USA legal regulation of the issues on delegating competence to the federal government covers not only public authority, but also the peoples. Particularly, amendment 10 to the US Constitution of 1787 states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people".

European regionalization processes provided the regions with new opportunities to develop a strategy and to establish new network political interaction with other regions. The following things contributed to it: definition of minorities' rights in the EU and the CoE legislation, for example, the Council of Europe Framework Convention for the Protection of National Minorities, signed on February 1, 1995, enhancement of this supranational formation regional level, positive assessment of autonomies in resolutions of the Parliamentary Assembly of the Council of Europe, for example, in resolution 1334, dated 2003, "On positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe". According to the European integration analysts, within the period from 1980 till 2001 none of the EU members became a more centralized state, while many of them made steps towards further decentralization.

In the meantime, the EU supranational institutions had to search for solution options and create new institutional frames for conflict prevention [14].

Autonomization supporters claim that experience of autonomies confirms the possibility of delegating powers to them: the process itself and its results have different names depending on the peculiarities of the region or macro-region. In the UK, decentralization of legal regulation is called devolution, in countries of continental Europe – autonomization, while all these cases relate to different variants of decentralization. Therefore, optimists use the notion of devolution speaking about efficient experience of decentralization without revolution, when a conflict may be not an obstacle, but a stimulus for development [22, pp. 387–394]. Their opponents claim that autonomization has a dynamic character, its political demands are increasing and, consequently, it unavoidably leads to separatism or secessionism [17; 19, pp. 245–276]. On the one hand, the level of knowledge on ethnic territorial autonomies, especially in Europe, is rather high: there is plenty of academic literature devoted to various aspects of devolution in Scotland, Wales and Northern Ireland and also to autonomization in Belgium or the Flemish-Walloon conflict [2; 3; 5; 10; 11; 12; 16]. Researchers are less interested in such autonomies as the Aland Islands, the Faroe Islands, Greenland, Corsica, first of all due to the fact that situations in these autonomies seem to be not so conflict, at least they do not pose a threat to the constitutional rules and established practice [7, pp. 97–111; 21]. On the other hand, comparative analysis shows significant discrepancies in definition of ethnical territorial autonomies and their assessment by scientists [8; 5; 12; 17; 19].

As a rule, studies are focused on political parties, regional political elites, institutions and establishment procedures, and also issues of regional and ethnical identity [14; 15; 16; 19; 20; 10].

The meaning of the social component of the autonomization process in Europe

The social component of autonomization, considered under this study as vesting autonomies with powers to carry out social policy and providing them with the relevant financial opportunities in the course of decentralization or devolution, seems to be definitely underestimated in determining the efficiency of ethno-regional autonomies within the EU.

However, examination of the EU social legislation and social policy shows that there are considerable discrepancies in the analysis and assessment. Probably, one of the most important and supported by researchers theses is that the difference in char-

¹ The Treaty on European Union, signed in Maastricht on February 7, 1992.

² The Charter of Fundamental Rights of the European Union, adopted in Nice, 07.12.2000.

acteristics of the EU social legislation and European social model do not in any way impugn its significance [18; 13].

Within the EU “establishment of single social space, which provides incremental social and economic development, requires clearly defined territory, efficient tools and methods for social policy implementation, juridical basis” [9, p. 106]. According to researchers, “One recent trend is, however, clear: despite the persistence of these areas of contestation, social law and policy have been moving increasingly in the mainstream of the EU, both in terms of the policy-making agenda and the conditions under which law and policy is made, and in terms of academic reflection upon the law and policy” [25, p. 4].

In accordance with the amendments made to the Treaty on the Functioning of the European Union (the Treaty of Rome)¹ by the Treaty of Lisbon, dated 2007, the field of social policy is referred to the field of the EU and member states’ “shared competence” with preservation of the national governments’ predominant competence. According to Article 2 of the TFEU, the Union has competence to carry out actions “to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas”. The Treaty fixes the refusal from uniformity in this field: “Legally binding acts of the Union adopted on the basis of the provisions of the Treaties relating to these areas shall not entail harmonization of Member States’ laws or regulations”. It is pointed out that “The Union shall take measures to ensure coordination of the employment policies” and may “take initiatives to ensure coordination of Member States’ social policies”.

In our opinion, the processes of regionalization, stimulated by the EU, and development of the European social model are clearly interconnected. Now we will carry out analysis of some European autonomies.

The Scottish model of devolution

When analyzing the devolution social component, Scottish case is of special interest as Scotland has become an example of the most successful model of devolution in Great Britain in terms of power distribution as well as legal and institutional organization of shared competence. The devolution process in Great Britain had begun long time before the 20th century. Vernon Bogdanor has reckoned ten attempts to achieve partial delegation of the central government powers to the regional authorities in Scotland and Ireland since 1886: in 1886,

1893, 1912, 1920, 1973, 1982, 1976, 1978, 1979, 1997 [16]. In the United Kingdom’s three parts – Scotland, Wales and Northern Ireland – devolution is carried out at a different pace and under different models. In recent years, the issue on necessity of England, being a part of Great Britain, to be involved in this process has become increasingly pressing. In 1999 the Acts stipulating establishment of parliaments in Scotland and Wales were adopted. A similar authority (Assembly) was created by the Belfast Agreement between Catholics and Protestants in Northern Ireland [3, p. 60]. The Scottish National Party and Plaid Cymru – the Party of Wales, having occupied significant places in new institutions, have gained a power to make decisions important for their regions. According to researchers, “rather wide autonomy, gained by the two regions, transformed a country from the United Kingdom of Great Britain and Northern Ireland into more complicated formation, having considerably changed its primarily unitary character” [3, p. 63].

The first package of documents regulating intergovernmental relations in the United Kingdom consisted of the frame Memorandum of Understanding (MoU) and five quadruple agreements signed by the British government, from one side, and the heads of Scotland, Wales and Northern Ireland executive power branches, from the other side.

The Memorandum of Understanding contains key aspects of the connection between the center and the region. The document is mainly focused on the principle of voluntary interaction, consultations and cooperation. The last updated Memorandum was published in October, 2013². Within the frameworks of the Memorandum, the Joint Ministerial Committee was established. There is a conciliation procedure under which the British Parliament may bring a bill that involves the region competence with the Scottish Parliament approval. According to data from the official website of the Scottish government, from 1999 till 2011 119 bills passed the conciliation procedure during three sessions, and 29 bills are planned for the fourth session (from 2011 to 2016)³.

In accordance with the Memorandum, the Scottish Parliament is vested with important powers in the fields of education, health care and housing, where it can adopt laws. The Scottish Parliament competence also includes agriculture, forestry and fishery, environmental issues, Gaelic, law and internal affairs, local governance, natural and

² Available at: <http://www.gov.scot/Publications/2013/09/9971/2> (accessed 10.07.2016).

³ Sewel Convention – Legislative Consent Motions, The Scottish Government. Available at: www.scotland.gov.uk/About/Government/Sewel (accessed 10.07.2016).

¹ Original name – the Treaty Establishing the European Economic Community (signed in Rome on March 25, 1957). The modern name was established by the Treaty of Lisbon of 2007.

manmade heritage, planning, police and fire-fighting services, social labor, sports and art, statistics and public records, tourism and economic development, transport.

The Scotland Act 2012 develops the above-mentioned document provisions and slightly expands powers of the Scottish regional authorities, and also it changes the name of the Scottish regional representative authorities – from the Scottish executive to the Scottish government.

The Government is in charge of the current implementation of the Parliament's decisions within the frameworks of its competence and annually handles the budget of approximately 30 bln pounds (since the establishment of this body, the budget has increased by 10 bln pounds, which also confirms the increase in significance of the Scottish regional authorities). As a result of the 2014 Scottish independence referendum, Scotland remained a part of Great Britain, but the Smith Commission, formed after the referendum, proposed to provide the Scottish Parliament with the right and financial opportunities to determine policy in the field of social support for the elderly, disabled people and other vulnerable groups of population.

By January 2015 draft clauses to the Scotland Act had been prepared based on the recommendations of the commission, which got the common name "Scotland in the United Kingdom: an enduring settlement". It emphasized the uniqueness of the Scottish position: on the one hand, Scotland is a part of a global international player, from the other hand, it has a right to take its own decisions through the local parliament and to solve issues of the public sector independently. The bill preserved the British Parliament right to block the Scottish Parliament decisions on issues within its competence, which causes criticism from the side of the Scottish Government¹.

The new stage of the Holyrood (the Scottish Parliament) additional powers coordination began after the national elections of May 2015, which resulted in the Scottish national party gaining 56 out of 59 possible mandates in the House of Commons, thus having become the third party in the British Parliament. N. Sturgeon, the party leader, noted that there should be no "reservation clauses" in realization of the rights delegated to the regions and Scottish ministers should have an opportunity to make final decisions on issues within the local parliament competence. Otherwise, the SNP planned to put an issue on the Scottish separation to a referendum. D. Cameron then said that the decision to hold a refer-

endum made by Edinburgh without coordination with London would not be acknowledged. Moreover, the prime minister rejected the idea to hold a new referendum before the national elections in 2020.

Over the last years, Scotland has been holding out as a full participant in the supranational political process, it has its office in Brussels, actively supports the conception "Europe of the regions", develops connections with other European constitutional autonomies (primarily with the regions of the Belgian and the German federations). At the same time, in accordance with the Scotland Act, relations with the EU and its institutions refer to the competence of the British Parliament and Government.

For Scotland, devolution and European integration appeared to be the processes stimulating claims to independence and hopes for better governance and life. It is interesting that the majority of Scottish respondents-participants of various polls stated that they would support the Scottish separation from Britain in case of British withdrawal from the EU. Brexit as the process of the British withdrawal from the EU poses new challenges to the region.

Flanders as an engine for autonomization in Belgium

The first Belgian Constitution, adopted in 1831, became for the regions the first factor that provoked the conflict between the Flemish and Francophone parts of Belgium. Firstly, the Constitution stipulated statutorily the unitary state structure. Secondly, new Belgian Constitution asserted the French language as a single national one, which became the strongest catalyst for the regional processes [26].

This crisis became the main reason for the federal reform – gradual revision of the Belgian Constitution, actually initiated by the Flemish part.

However, the first constitutional revision only took place in 1970. By that time Flemish public and political organizations had managed to become noticeable political actors, while Walloon ones followed the model of "constrained regionalism" [12]. The Constitution stipulated the existence of three communities: Flemish, Francophone and German-speaking (all the three languages had become official) and three regions: Wallonia, Flanders and Brussels. Flanders considerable strengthening became the reason for the second revision of the Constitution in 1980, which resulted in Flanders and Wallonia getting the status of autonomies. Additional amendments to the Constitution slightly expanded the regions' financial and legislative powers. Then two regional assemblies, which consisted of the national parliament current members repre-

¹ New referendum on Scottish independence: to be or not to be. Available at: http://russiancouncil.ru/inner/?id_4=6760#top-content (accessed 10.07.2016).

senting electoral districts in the relevant regions, were established.

Political institutions of the communities and regions were created – Flemish and Francophone Legislative Assemblies and also the Flemish Executive Committee and the French Community Executive Committee.

A new phase of the state governance reform began in 1988. The regions' competences and budget payments to them were expanded. The capital city of Brussels became a region. There were established the regional assembly and government. However, the regional parliaments were formed from amongst the national parliament members from the relevant regions. Consequently, they did not satisfy the Walloon and Flemish autonomy requirements.

By 1989 three economic regions had developed: Flanders, Wallonia and Brussels. It was enshrined in St. Michael's Agreements of 1993, according to which Belgium is a federative state, consisting of communities and regions. Article 1 of the Constitution stipulates two types of the federation's territorial entities: cultural communities (Flemish, German, and French) and regions (Flanders, Wallonia, and Brussels). Each entity got its legislative assemblies and executive authorities, as well as a huge scope of rights, including the right to enter into international treaties.

In 1993 the Belgian Constitution was revised for the last time. It was added by the provision on the regional parliaments to be elected through direct voting, the number of the national parliament members was reduced.

As the result of six rounds of the regional reforms, which had begun in 1970, a multilevel federative system with three language communities and three territorial regions was created in Belgium. The central government transferred most of its powers to the regions and communities, and the next state reform of 1993 made the regions and communities' parliaments elective ones, thus having strengthened their legitimacy.

It is important to note that resulting from the reform, Flanders has become more consolidated and isolated as the Flemish region and Flemish cultural community institutions, in contrast to Walloon ones, have been merged since the establishment of the regions in 1980 [12].

Due to the reforms, the federal authorities have become the institutions of interaction between the two leading regions. For example, electoral districts for elections for the Chamber of Representatives are arranged on the linguistic basis. Additionally, electorate of parties usually belongs to a certain linguistic region. Therefore, interaction in the Parliament comes down to the in-

teraction of regions – through the parties representing these regions.

The Senate is also an institution for the regional interaction. Firstly, final distribution of seats between the parties corresponds to the distribution of the national election votes. Secondly, after the fourth state reform of 1993 more than a quarter of senators are assigned to the Senate by the Communities. Thirdly, according to the sixth state reform, the Senate would not be elective any more, it would be formed from amongst the Regions and Communities' representatives.

The above-mentioned is also true for the Belgian Government, whose seats, in accordance with the Constitution, are shared between the Francophones and the Flemish. This fact causes permanent conflicts in the process of the Council of Ministers formation. Yet such a system provides the representation of both regions in the Government and its coalitional character, which again confirms its status as the institution of interaction between Flanders and Wallonia.

However, the multilevel federative structure with majority of functions delegated to the Regions and Communities allow the latter to solve governance issues almost independently. The Regions carry out the widest powers in all the spheres. For example, they have considerable fiscal independence; they also regulate some issues in the field of foreign policy (for instance, foreign commerce). What is more, every new reform strengthened redistribution of the powers in favor of the regions' wider autonomy.

Additionally, various levels of governance make it possible for the country to function even without any central government. For example, after the election of 2010 the Government could not be formed for 589 days (that is the world record), nevertheless, the country continued successful functioning¹. Researchers believe that it was possible within the EU, which provides the legal basis and strict financial discipline.

However, the social component provides its own assessment of the Belgian conflict. On the one hand, the complicated federative system gives Belgium the opportunity to react to the EU social policy innovations more carefully. Karen M. Anderson, a social policy researcher, considers such a peculiarity to be relevant for retirement policy determination in Belgian autonomies [13].

When Urbain Van Deurzen became the chairman of the Flemish leading Employers' Association (VOKA), he said that he wanted transformation of Flanders' strategy in order to strengthen its eco-

¹ Belgium swears in new government headed by Elio Di Rupo. BBC News. 06.12.2011. Available at: <http://www.bbc.co.uk/news/world-europe-16042750> (accessed 10.07.2016).

conomic position in Europe¹. Other Flemish employers' organizations have already stated that they wanted to get rid of any early retirement system as soon as possible. They demanded to implement the Danish model of unemployment insurance allowance, being time-limited, which was not applicable in Belgium.

The acute struggle between employees and employers began in connection with the national agreement on wages (IPA), concluded between the federal employers' organizations (VBO and Unizo) and trade unions.

Social tensions still persist, which is evident from frequent strikes, which are especially perceptible when they are connected with public transport and other infrastructure spheres.

Spanish autonomies and their social powers

The Spanish Constitution of 1978 acknowledged seventeen national communities within the country, with Catalonia, the Basque Country and Galicia as the most "remarkable". Only three out of seventeen autonomous communities gained a special autonomy regime (Catalonia, the Basque Country, Galicia), as these regions initiated the process to gain autonomy as far back as during the Second Republic.

In 1979 the second Statute of autonomy of Catalonia was adopted. Catalonia was acknowledged as a "nationality". The Catalan language became Catalonia's official language along with Spanish.

A special institution was established – Bilateral commission of representatives of the Catalan Government (Generalitat de Catalunya), from one side, and the Spanish central Government (art. 183 of the Catalan Statute)², from the other side. Generalitat-State bilateral commission consists of equal number of parties' representatives. The commission holds plenary sessions at least twice per year, and each time when it is requested by one of the parties.

The Generalitat competence fields, indicated in the Statute, include culture (art. 127); education (art. 131); the Catalan official language (art. 143); employment (art. 148); gender policy (art. 153); health care (art. 162); universities (art. 172).

From the economic viewpoint, Catalonia is one of the most developed Spanish regions with strong separatist trends. The Catalan Generalitat current president Carles Puigdemont declares the necessity to bring the Catalan ship to the independence ha-

ven, however, the Spanish constitutional norms obstruct this intention.

The Basque Country as a Spanish autonomous community is just a part of the Basque region (so called "Southern Basque Country"). The Basque Country public status is stipulated in the Statute of Autonomy of the Basque Country, adopted in 1981. Article 1 of the Statute³ declares: "The Basque People or "Euskal-Herria", as an expression of their nationality and in order to accede to self-government, constitute an Autonomous Community within the Spanish State under the name of "Euskadi" or the Basque Country, in accordance with the Constitution and with this Statute, which lays down its basic institutional rules".

In the Basque Country, there is a directly elected legislative body – the Basque Parliament. The electoral district is a historical territory (i. e. Álava, Biscay, Gipuzkoa). The Basque Parliament consists of equal number of representatives (25 from each side) from each historical territory, elected on the basis of universal suffrage through free and direct elections by secret ballot. The electoral system is proportional. There are 75 deputies. The Speaker is elected by the Basque Parliament from amongst its members and is appointed by the King. The Speaker appoints and deposes counsellors – the Government members. Thus, the regional government is formed by the party (parties) that has majority in the parliament. For the last years, there has been relative calm in the region after ETA, the radical separatist organization, declared its refusal to conduct terrorist activity [11].

Insular autonomies in Europe

As O. B. Podvintsev notes, "an autonomous status for insular territories is used rather often and in this regard they deserve separate consideration". [7, p. 95]. He refers to the opinion of P. Hepburn, who rightly notes that "islands have developed some of the most innovative autonomy arrangements in the world". Small island peoples have often rejected outright independence in favor of developing unique forms of constitutional status within larger state or supranational bodies" [21]. Following the Canadian scientist, the Russian scientist claims that as a consequence, there are many terms that characterize legal status of these territories as an "autonomous province" (Aland Islands as part of Finland), an "associated state" (Anguilla in relation to the United Kingdom), an "overseas territory" (British Virgin Islands), a "special region" (Sardinia in Italy), a "territory of the commonwealth" (Cocos Islands under the authority of Australia), an

¹ Available at: <http://rksmb.org/articles/society/konets-belgii/> (accessed 10.07.2016).

² Full text of the Statute of Autonomy of Catalonia. Available at: http://www.parlament.cat/porteso/estatut/estatut_angles_100506.pdf (accessed 10.07.2016).

³ The Statute of Autonomy of the Basque Country. Available at: http://homepage.univie.ac.at/herbert.preiss/files/statute_%20of_autonomy_BC.pdf (accessed 04.08.2015).

“overseas department” (Reunion under the authority of France), a “federal province” (Newfoundland as part of Canada) and an “autonomous region” (the Azores as part of Portugal) [7, pp. 96–111].

Researchers point out that the Aland and the Faroe Islands were given the status of autonomy in the second half of the 20th century. The spheres like education, culture, protection of ancient monuments, health care and health services, environmental protection, internal transport, local government, post service, radio and telecommunication are regulated by their own legal regulations.

The Self-Government Act of the Aland Islands stipulates that Lagting should ensure social benefits of the Aland islanders to be at least no lower than those adopted in Finland in drafting the autonomy's budget.

Corsica is an interesting example of an island whose inhabitants like to say that their island has been conquered numerous times but it has never been put under control. Corsica has another special public and legal status compared to other French regions. This status is called “territorial collectivity of Corsica”. It is legislatively reflected in Law of May 13, 1991 “On the Status of Territorial Collectivity of Corsica”.

It defines the spheres of policy that make the regional government an autonomous one, including education policy and social welfare. In 1999 on the initiative of the Prime Minister Lionel Jospin, there began negotiations with the central government on the expansion of the internal autonomy of Corsica (the Matignon process). The central government, representatives of all levels of the Corsican government and Corsican nationalists participated in the talks.

The talks resulted in a new law on Corsica, expanding its powers (2001). This law should have come to force in 2004. It was put to a referendum in 2003, however, the population opposed to the expansion of autonomy.

In summer 2003, at the regional referendum the Corsicans did not support the proposal of the Central government on granting broader autonomy to the island. They preferred to save state subventions and tax exemptions.

Thus, the social and economic component was stronger than ethnic or linguistic reasons. The situation in Scotland that took place in 1979 is a clear illustration of that. The leading Scottish universities opposed devolution as they were afraid of cutbacks in funding for education.

Conclusions

Different models of autonomy in Europe demonstrate various strategic options of regional and / or ethnic elites. The models considered in the

article are characterized by elites' orientation at achieving a considerable degree of autonomy and its legal legitimization (decentralization without breakup of the state, devolution without revolution). Though political ambitions, ethnical and regional identity play their significant part, socio-economic factors, in general, and the autonomization social component, in particular, determine this process to a considerable extent. The European models of autonomization do not exemplify political ambitions being satisfied at the expense of social policy curtailing. On the contrary, autonomies advocate for vesting them with significant powers in this field, which is understood in a rather broad sense.

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