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Małgorzata Markowska, Dariusz Głuszcuk,
Beata Bal-Domańska



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Grygorii Monastyrskyi, Tetyana Monastyrska

Ternopil National Economic University, Ukraine

MODERNIZATION OF LOCAL SELF-GOVERNMENT IN UKRAINE

Summary: This article is dedicated to the issues of the current state of some problems in Ukraine in the direction of the development and reinforcement of the system of local self-government as a showcase of the most important elements of local democracy. In context of the reforms which are now taking place in Ukraine, this topic and the relevant problems are very topical as an example of the formation of local democracy in post-Soviet space. A lot of these countries have the same problems as Ukraine. In this article, the main problems obstructing the road to an effective system of local self-government not only were defined, but also the main possible ways of their solution were given.

Keywords: decentralisation of power, local democracy, local self-government, open society.

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1. Introduction

Local self-government is really a democratic and very effective form of territorial development. It offers possibilities for the local population to solve independently local issues, in that the limits of national legislation and policy are a basis for territorial prosperity and well being. However, the recognition of the principles of local self-government, by any country, does not automatically result in the prosperity of communities, nor improve the process of service delivery. The local autonomy of a real and effective local self-government is an indicator of the state of local democracy in any country and requires concrete and precise legislation with clearly defined possibilities, rights, responsibilities and mechanisms of control, as well as the political will and valuable support by the state.

2. The main principles of local self-government and key factors of local democracy

Democracy, in its theoretical aspect, has some principles, elements and criteria. Its main important components are freedom of speech, wide public participation in the process of decision-making, a widespread network and the free activity of non-

-governmental organizations, the real and effective functioning of the system of local and regional self-government. The existence and effective functioning of these elements is an indicator of a real state with democracy in the country. Ilya (1997) in his article, "Ukraine between proto-democracy and 'soft' authoritarianism", gave the following elements of democracy: civil liberties (freedom of speech, freedom of assembly, etc), an independent judicial system, public officials held accountable to the law, a vital free press and a political system which seeks legitimacy from the public via free open elections. James (1991) defined three main conditions for effective democracy. They are, in the author's opinion: political equality, non-tyranny and deliberation.

The main important form of local democracy and its display is local self-government. Local self-government is one of the most important elements of a democratic system in any country. The development of a country depends on the development of communities and only democratic power on a local level can give the citizens the quality of services and quality of life they deserve. The European Charter of Local Self-Government (ECLSG) (1985), defined "the safeguarding and reinforcement of local self-government in different European countries as an important contribution to the construction of a Europe-based principles of democracy..." / Preamble/. As noted by Gerry (1991), more generally, the establishment of viable local government in Eastern Europe is seen as central to the establishment and maintenance of the democratic process. It is also seen as an appropriate level for effective government intervention to meet welfare needs and stimulate economic efficiency. Local self-government is understood as the right given to territorial communities, by the state, to take decisions on local matters autonomously and under their own responsibility within the framework of national legislation.

Alan (1991) defined two main doctrines of local government: 1) the doctrine of general competence and 2) the doctrine of subsidiarity. He noted that the doctrine of general competence – the principle that local authorities have a general power of jurisdiction over the affairs of their areas and inhabitants are subject to the law – is the norm in continental Europe. The doctrine of subsidiarity provides a justification for the special position of local government. This implies that the responsibility for carrying out tasks should be held at the lowest level of government that is competent to undertake them and, where necessary, higher authorities should give support to enable them to fulfill the responsibilities that are appropriately theirs under this doctrine.

The European Charter of Local Self-Government (1985) formulated the basic principles of local self-government. They are the principles of legal, organizational and financial autonomy of local self-governmental authorities. The legal autonomy of local self-governmental bodies means that this authority has its own powers which are specified by the Constitution and the law of the respective states. Organizational autonomy means that the local self-governmental bodies can be free to determine their own structure in such a way that it would fully correspond to the local requirements and provide effective administration.

The financial autonomy of local self-government means the right of local self-government bodies to possess and administer their own financial resources. These resources should be sufficient enough for the authority in order for it to execute its functions and responsibilities. The state of execution of these principles and their functioning in the system of local self-government, in any country, is the main indicator of the state of local democracy and the state and development of local self-government.

3. The current state and problems in Ukraine with the realization of the main principles of local self-government in accordance with ECLSG

Ukraine has a lot of positive aspects in the realization of local self-government in the country. The bodies of local self-government are effectively cooperating with the local population, so that from public hearings they are defined in national legislation as an obligation for the local authorities. However, there are some significant problems with the real self-administration of the citizens and the real autonomy of local self-governmental bodies. The study will consider this here, because their solution is very important for the further development of local self-government in the country, shown as the main element of local democracy. In Ukraine, the right given to territorial communities to independently solve local issues is guaranteed by its Basic Law (Constitution of Ukraine, 2006). This right is determined and recognized as local self-government (article 140).

The principle of independence and the autonomy of territorial communities, which in practice was proclaimed in the Constitution, was unfortunately not always realized. The mechanisms of the achievement of independence and the autonomy of local self-governmental bodies, particularly in the process of decision-making, are not precisely defined. Moreover, the definition of “issues of local significance” (article 140 of the Constitution) needs more precise amplification in that they are not determined concretely in the Constitution of Ukraine. The Constitution of Ukraine has recognized the organizational, financial and legal autonomy of local self-governmental bodies in accordance with the European Charter of local self-government, but in real life, these principles do not always find their practical implementation. The basic laws which regulate the realization of local self-government in the country are the Laws of Ukraine, that is, “On local self-government in Ukraine” (21/05/1997), “On the bodies of self-organization of citizens” (11/07/2001) and “On the Local State Administrations” (09/04/1999). The law of Ukraine “On local self-government in Ukraine” (1997) determines the basic principles of the activity of local self-governmental bodies, but at the same time does not determine the ways of achievement and provision of the real independence of territorial communities. Article 4 of the aforementioned law determines the basic

principles of local self-government to include its legal, organizational and financial independence. At the same time this law does not determine the concrete scopes and forms of independence, mechanisms and instruments of its realization and provision.

In Ukraine there are some legislative basis for the independence of local authorities, and in relation to budgetary policy, they can make decisions about setting local taxes and fees, but their joint amount in Ukraine is just 2.5% to 3.5% of the entire amount of taxes. The accepted Budget Code of Ukraine enabled the regions to pursue a more independent fiscal policy; however, it did not solve the entire local financial problems, particularly the financial independence of local self-governmental bodies. In practice, the proclaimed principle of the independence of local budgets is not fully realized, but generates a lot of negative tendencies at all stages of local budgeting. The financial autonomy of local self-governmental bodies means that these bodies should have the right to collect and distribute their own financial resources independently. These resources should be enough for the effective realization of their functions and power by local self-governmental bodies. Some part of these resources must enter the local budgets through local taxes and fees. Local self-government bodies must have the right to determine their rates independently, but within the framework, this would be foreseen by national legislation. It is necessary to note that without regard to the proclaimed principle of the independence of territorial communities in Ukraine, the real mechanisms of providing this independence is absolutely not enough.

In practice situations often take place when the local state authorities (local state administrations) interfere in the activity of local self-governmental bodies. This is so because there are serious contradictions in two of the main laws on the activity of local authorities in Ukraine: “On Local Self-Government in Ukraine” (1997) and “On local State Administrations” (1999). To ascertain this, it is enough to compare these two laws, particularly the responsibilities of local self-governmental bodies and local state administrations. This shows that the issue of the clear and precise division of local powers is the most important task for Ukraine in this stage of its development. The duplication of powers between local state administrations and bodies of local self-government today is one of the major problems that need the most rapid solution. Discussions have already been going on for about five or six years in Ukraine as regards the necessity of a clear division of powers, jurisdiction and responsibility between these bodies, but the real steps which would finally decide the noted issue have not yet been taken.

However, this problem was defined in many conferences and in different letters of the Mayors of Ukrainian cities to the Cabinet of Ministers, etc. The first document in which this problem was defined was the “Concept of state regional policy”, which was ratified by the Decree of the Ukrainian President on May 25, 2001, and “the state support program for the development of local self-government in Ukraine”, which was ratified by the Decree of the Ukrainian President on August 30, 2001. The aforementioned documents, in their entirety, emphasized the necessity of a clear division of power and responsibility between the bodies of territorial power.

It was defined that these bodies can and must work together on the solutions of local problems, but must also have their own functions and powers. This was also clearly defined in the European Charter of Local Self-Government:

“Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another authority (central or regional), except as provided for by the law (article 4).”

Nowadays, Ukraine continues to conduct reforms. On the basis of the above mentioned documents, the main problems in Ukraine in the direction of the effective local self-government in the country can clearly be defined, while its required solutions, as well as its methodological and theoretical support, would be subsequently given as:

1. The democratic system of regional self-government which directly represents the interests of communities at an intermediate level between local and state authorities, is not functioning effectively. The mechanisms of representation of communities on this level, as well as a clear distinction of local from regional self-government, and the latter from the peripheral state executive powers, still require its constitutional recognition.

2. In Ukraine, it was previously seen that there was a problem of a clear definition of the functions and responsibilities of local self-government and local executive bodies, as well as between local and regional authorities. However, the subsidiarity principle of local power was not realized.

3. The accepted Budget Code of Ukraine enabled the regions to pursue a more independent fiscal policy; however, it did not solve all the local financial problems, particularly the financial independence of local authorities. In practice, the proclaimed principle of independence of local budgets, to a large degree, was not realized. This generated a lot of negative tendencies at all stages of local budgeting.

4. In Ukraine, the right given to territorial communities to independently solve local issues is guaranteed by its Basic Law – the Constitution of Ukraine. In practice, the principle of the independence and autonomy of the territorial communities, which is proclaimed in the Constitution, is not always realized because there are serious contradictions in the current legislation and there is no concrete definition of the measures and ways of the real achievement of local autonomy.

Pyhtinskij (2009) defined the main economic problems of the current reforms in Ukraine. In the author's opinion, they are: 1) lack of financial resources for the development of territorial communities; 2) ineffective inter-budget relations; 3) insufficient orientation of state policy on local development; 4) absence of solutions in dividing public and communal property; 5) ineffective tax basis of local budgets.

However, the current state of reformation in Ukraine requires not only financial support, but also solutions to the economic problems. In solving the main current problems of local self-government in the country, there is no need for significant financial resources because their solutions require, first of all, the legal support and the political will. The main problems of the current state of local self-government

in Ukraine are in the sphere of legislation. In practice different working groups are organized on these issues every year in the country, and they prepare different proposals, develop concepts and drafts of law, and make changes to current laws, but the final solution has to be made by the Supreme Council of Ukraine. In some cases they are not taking into account the previous proposals and changes of previous working groups. As defined in the expert report on the draft of law “The main basis of state regional policy in Ukraine” by the experts of the Council of Europe (2009), a new concept and law has to be prepared taking into account previous laws and all current legislation (New Public Regional Policy of Ukraine (2009)).

In 2001 the Council of Europe accomplished the complex assessment of the system of local and regional self-administration, as well as the state of local and regional democracy in Ukraine, in which the results were reflected in the relevant recommendations – Recommendation 102 (2001) “On Local and Regional Democracy in Ukraine”. A significant part of this recommendation is dedicated not only to the issues of the development of local democracy, but to the problems and ways of creating and providing conditions for the thorough development of local and regional self-government as the main element and showcase of real democracy. The main proposals and recommendations of the Council of Europe were related to: 1) the administrative and territorial organization of the country and the introduction of a system of regional self-government; 2) the division of power and responsibilities between local authorities: bodies of executive power and local self-government; 3) providing local self-governmental bodies with the necessary resources for the execution of their responsibilities; 4) the improvement of the system of legal protection of local self-government, etc.

The implementation of the “recommendations” of the Council of Europe is very important for any country because it can really help to improve the state of local and regional democracy in the country. Unfortunately, almost all the points of this “recommendation” did not find practical implementation in Ukraine. The Municipal Code/its creation is one of the recommendations that can exaggerate the number of legal acts, which in some cases are contradictory and can solve a lot of legal problems of local self-government. First of all, the direction of a clear division of local power has not been adopted. Its adoption could help to avoid significant contradictions in the current legislation such as the duplication of power on local and regional levels of government, etc.

The democratic system of regional self-government, directly representing the interests of communities at intermediate level between local and state authorities, is not functioning effectively. The mechanism of the representation of communities on this level (regional), as well as a clear distinction of local from regional self-government and the latter from the peripheral state executive powers, still requires its constitutional recognition. In Ukraine, it was previously noted that there is a problem of a clear definition of the functions and responsibilities of local self-government and local executive bodies, as well as between local and regional authorities. However

the subsidiarity principle of local power has not been realized in full measure. The delegated responsibilities usually do not receive the relevant financial support. This problem has been discussed at many conferences on local decision-making and in most reports of the Mayors of Ukrainian cities, but the final solution has not been adopted. The local self-government bodies of Ukraine have some power in the process of local decision-making, but they do not have real independence to make their own decisions (such as independently forming their organizational structure), create additional services for the public by the additional sources of revenues to local budgets, and exercise their initiative with regard to any matter which is not excluded from their competence. Nonetheless, the mechanism of the realization of independence and autonomy of local self-government, particularly in the process of decision-making, is not precisely defined.

In spite of the disappearance of some problems, Ukraine has some positive examples and good practices of local decision-making. The activity of the local self-government authorities has been more transparent in recent years than in the past. Ukraine has examples of the effective collaboration of the municipalities with the public in their day-to-day work. However, the effective activity of local self-government bodies and local state authorities in Ukraine will be possible only with a clear legislative division of their powers and responsibility. At present, there is the necessity of introducing relevant changes to the current laws of Ukraine, such as: “On local self-government in Ukraine” and “On the local state administrations”, and an acceptance of new laws, in particular, “On the regional self-government”, “On the territorial community”, “On the administrative-territorial reform” and others.

Regarding the current stage of development of Ukraine, the local self-government bodies do not have sufficient powers for effective activity in the relevant territories. As for today, it is extremely important to give more independence to local self-government bodies, but they should operate within the framework of the law and have significant responsibility for this activity. Within the framework of local self-government, the administration of local and some national affairs must be carried out by a delegation of powers. However, together with this delegation it is necessary to further expressly define the financial resources as well as the responsibilities and mechanisms of control. Having done this, there will be the need to give to local self-government bodies wider powers for the resolution of issues of local development and to grant the local state administrators, especially those monitoring, functions as representatives of state at the local level.

4. Public participation in local decision-making in Ukraine

Public participation in the process of decision-making is an important element of the transparency of power and the development of democracy, and an indicator of the level and quality of democracy in any country. The issue of public participation in the process of decision-making is very important for Ukraine at the moment. Ukraine is

trying to build a democratic society, moving in the direction of strengthening and developing democracy. For this purpose in mind, there is a need to make some legislative and organizational changes. The Constitution of Ukraine was recognized by the Venetian Commission, "For democracy through the law", as one of the most democratic constitutions, and it really gave wide opportunities for public participation, particularly at the local level of government. For example, in article 5 of the Constitution of Ukraine, it can be seen that one of the main sources of power in Ukraine are the people.

People implement their power directly and via the bodies of public administration and local self-government. For the development of the civil society in Ukraine, article 36 of the Constitution states that Ukrainian citizens have the right and opportunity to join political parties, non-governmental associations and professional units. In article 40, citizens have the right to approach the bodies of public administration and local self-government for solutions to their problems, while in article 69, the forms of the people's will are stated: "The people's will is realized by elections, referendum and other forms of direct democracy" (Constitution of Ukraine, 2006). There are some laws of Ukraine in which different opportunities were provided for public participation in local decision-making. They are: "On local self-government in Ukraine"; "On local state administrations"; "On appeals of the citizens"; "On information"; "On order of covering the activity of public administration and local government bodies of Ukraine in the media"; "On the status of deputies of local councils"; "On the bodies of self-organization of the citizens", etc.

The country has also some international documents in the sphere of the transparency of power and the development of democracy which were ratified by Ukraine and therefore are a part of national legislation: 1) the European Charter of Local Government (ratified in 1997); 2) the Convention about the protection of citizens' rights and main freedoms (European Convention of citizens' rights) (ratified in 1997); 3) the joint convention of citizens' rights (ratified in 1950); 4) the Convention about access to information and public participation in the process of decision-making" (ratified in 1999), etc.

In general, Ukrainian legislation corresponds to international legislation and, in particular, to the European norms of democracy, local self-government, defence of human rights and public participation in the process of decision-making. However, at the same time, there are some problems in the country in this sphere. A lot of the points of the legislation are only found "on paper", but they are not working because the mechanisms and instruments of its realization, as well as the control of its execution, in most cases are absent. Some of the important points of the Constitution and laws do not effectively use, in particular, some important forms of local democracy such as local referendum, etc. In spite of the existence of the legislative opportunities for public participation in local decision-making, not all the local governmental bodies use it. There are some reasons for this: 1) the reluctance of the authorities and representatives of power to open their activity for the public;

2) the absence of legislative obligation and responsibility (not only opportunity) for local government bodies to involve the public in the process of decision-making; 3) the fear of public servants that citizens, by their participation, will delay the process of decision making; 4) the lack of the necessary knowledge and skills for active participation in Ukrainian civil society; 5) the lack of information about governmental activity.

The main common problems hindering public participation in decision-making in Ukraine are: 1) lack of relevant experience; 2) lack of methodological and technological support; 3) insufficient and incomplete preparedness for power; 4) insufficient legislative support (particularly at central level of government).

The positive aspects of public participation in local decision-making in Ukraine are: 1) more effective and active public participation at local level of government than at central level; 2) the existence of the necessary basis for legislation; 3) moral preparedness of citizens.

An example of the real relationship and partnership between the public and the authorities for improving policy implementation in Ukraine, is the All-Ukrainian Municipal Hearing. These hearings have the real influence, because they not only discuss the problems of the development of local government and local democracy in Ukraine, but also make concrete decisions for practical implementation. This is an example of the permanent and effective interaction between scientists and public officials from all levels of government, local government employees and a wide range of the general public. The 9th Hearing (2003) opened a new page in the development of democracy in Ukraine. It was the first example for conducting the professional-public assessment of the All-Ukrainian Reform (The Reform of Housing and Municipal Economy).

After the preparation of this reform by the Department of Housing and Municipal Economy, it was put for discussion on the Hearings. Approximately 300 participants were working in small groups and discussing all points of the Reform for four days. Practically all the proposals were taken into account in the final document, which was sent to the Supreme Council of Ukraine for consideration. The famous fighter for democracy, G. Soros, remarked that democracy, first of all, is an open society – a society in which real power belongs to the citizens: “When we speak of open society, it means a form of organization that can be loosely described as democracy, but the concept of open society is more comprehensive. It means not only a democratically elected government, but also a society that is not dominated by the state, which means a strong civil society and the rule of law” (Soros, 1994). Ukraine is going in this direction, that is, the direction of improving her democracy and reinforcing local self-government and civil society. However, it is just the beginning of this difficult and very important journey.

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MODERNIZACJA SAMORZĄDU LOKALNEGO NA UKRAINIE

Streszczenie: Artykuł zawiera rezultaty analizy stanu i problemów rozwoju samorządu lokalnego na Ukrainie w kontekście kształtowania demokracji lokalnej. Określony bariery kształtowania samorządu lokalnego na poziomie pierwotnym. Wyznaczono kierunki wzmocnienia możliwości administracyjnej i zasobowej samorządu lokalnego w warunkach reform systemowych. Uwzględniono perspektywy wpływu procesu integracji europejskiej Ukrainy na kształtowanie się skutecznego samorządu lokalnego.

Słowa kluczowe: decentralizacja władzy, samorząd lokalny, demokracja lokalna, zarządzanie w samorządzie lokalnym, lokalny rozwój gospodarczy i społeczny.