

Review

Local self-government in Ukraine: Strategic priorities and problems of realization

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Accepted 17 August, 2017

This article is dedicated to the issues of the current state of some problems in Ukraine in the direction of development and reinforcement of the system of local self-government as a display of the most important element of local democracy. In the context of reformation, which now takes place in Ukraine, this topic and relevant problems are very topical as an example of formation of local democracy on post-soviet space. A lot of these countries have the same problems as Ukraine. In this article, the main problems hindering the way of effective system of local self-government were not only defined, but also the main possible ways of their solutions were given.

Key words: Decentralisation of power, local democracy, local self-government, open society.

INTRODUCTION

Local self-government is really a democratic and very effective form of territorial development. Possibilities for local population independently solve local issues, in that the limits of national legislation and policy are a basis for territorial prosperity and well being. However, recognition of the principles of local self-government, by any country, does not automatically result in 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.

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

The fall of Berlin wall in 1989 was the beginning of a new epoch in development of an open society. Soros (1994) defines an open society as “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”. Democracy is the main basis

for development of a society for effective activity of the government and real citizens’ participation in it.

Democracy, in theoretical aspect, has some principles, elements and criteria. The main important components of it are freedom of speech, wide public participation in the process of decision-making, widespread network and free activity of non-governmental organizations, real and effective functioning of the system of local and regional self-government. 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 competitive elections. James (1991) has defined three main conditions for effective democracy. They are, by the author’s opinion: political equality, non-tyranny and deliberation.

Robert (1989), in his study “Democracy and its Critics” proposed to divide democracy into 3 types. All these types have their own elements and components, they are 1) Madisonian, 2) populist and 3) polyarchal democracy.

Scientists noted “democracy is frequently said to rest and compromise, but democratic theory itself is full of compromises – compromises of clashing and antagonistic principles”. Local democracy is also very important for development of open society. In general, local democracy has a very important place in the coming into existence of democracy in any country. Cooperation and partnership between local authorities and the public is the main way to real democracy. Procedural and institutional determinants of local democracy are successfully defined by Elena (2006). By the study's view, the institutional determinants of local democracy include the legal frameworks for the functioning of local government, the electoral system and political formations at the local level. The local government institutions, as well as the civil society, the media and the procedural determinants of local democracy relate to their administrative capacity in ensuring inclusiveness and fairness in elections held, degree of openness of local authorities, provisions for minority rights implementation and their effectiveness, as well as the ability of citizens to influence local decision-making through various channels.

So, it can be said that democracy is a basis for development of the open society, that is, a society in which citizens have the real power to influence the processes of administration and decision-making in the country. Also, it is a society in which governmental bodies are responsible and responsive to citizens' needs, and where the system of public control is effectively functioning. The key factors of democracy are the active civil society; the readiness of citizens to take active part in the process of decision-making in their countries; wide public participation in the process of decision-making (variety of forms of it, legal possibilities, etc.); free, honest and transparent elections, independent mass media; a developed strong system of local self-government; legal, fiscal and organizational autonomy of it, etc.

The main important form of local democracy and its display is a 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 the 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 the different European countries as an important contribution to the construction of a Europe-based principles of democracy...” /Preamble/. As it is 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 a 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 decision on local matters autonomously and under their own responsibility within the framework of national legislation.

Alan (1991) has defined 2 main doctrines of local government: 1) doctrine of general competence and 2) doctrine of subsidiarity. He has 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 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 principle of legal, organizational and financial autonomy of local self-governmental authorities. 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 of determining their own structure in such a way that, it would fully correspond to the local requirements and provide effective administration.

Financial autonomy of local self-government means the right of local self-government's 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.

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

Ukraine has a lot of positive aspects in realization of the local self-government in the country. The bodies of local self-government are effectively cooperating with local population, such that from public hearings, they are defined in national legislation as obligation for local authorities. However, there are some significant problems with real self-administration of the citizens and real autonomy of local self-governmental bodies. The study will consider them here, because their

solution is very important for further development of the local self-government in the country, as displayed by 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 achievement of independence and 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 organizational, financial, 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. The "article 4" of the aforementioned law determines the basic principles of local self-government to include the legal, organizational and financial independence of it. 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 bases for the independence of local authorities, and in relation to the budgetary policy, they can make decisions about setting local taxes and fees, but their common amount in Ukraine is just 2.5 to 3.5% from 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 independence of local budgets is not realized to a full degree, 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 a right to collect and distribute their own

financial resources independently. These resources should be enough for effective realization of their functions and power by local self-governmental bodies. Some part of these resources must enter the local budgets by local taxes and fees. Local self-government bodies must have a right to determine their rates independently, but within the framework, it would be foreseen by the national legislation. It is necessary to note, that without regard to the proclaimed principle of independence of territorial communities in Ukraine, the real mechanisms of providing this independence is extremely not enough.

In practice, the situations often take place, when the local state authorities (local state administrations) interfere in the activity of the local self-governmental bodies. This is so, because there are serious contradictions in two of the main laws on activity of local authorities in Ukraine: "On Local Self-Government in Ukraine" (1997) and "On local State Administrations" (1999). To make sure of this, it is enough to compare these 2 laws, particularly the responsibilities of local self-governmental bodies and local state administrations (Table 1). This shows that the issue of clear and precise division of local powers is the most important task for Ukraine on this stage of its development. 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. Already, discussions have been going on for about five or six years in Ukraine as regards the necessity of clear division of powers, jurisdiction and responsibility between foregoing bodies, but the real steps, which would finally decide the noted issue are not realized yet.

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 documents, in which this problem was defined, were the "Conception of the 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 entirety, emphasized the necessity of 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)."

Table 1. Responsibilities of local authorities of Ukraine in accordance with current legislation

Responsibilities of Local State Administrations, in accordance with the law “On Local State Administration”	Responsibilities of Local Self-Government bodies, in accordance with the law “On Local Self-Government in Ukraine”
<p>Art. 17. Responsibilities in the sphere of social-economical development. Local State Administration:</p> <p>1) Develops the projects of social-economical development programs..., and provide their implementation.</p> <p>2) Provides effective utilization of natural, human and financial resources.</p> <p>3) Forms, necessary for the administration of the social-economical development on the current territory balances of human, materially-financial and other resources.</p>	<p>Art. 27. Responsibilities in the sphere of social-economical and cultural development</p> <p>1) Preparation of the social-economical and cultural development program of villages, towns and cities..., and providing their implementation.</p> <p>2) Providing a balanced economical and social development program for the current territory, and the effective utilization of natural, human and financial resources.</p> <p>3) Providing and forming the balances of the financial and human resources, which are necessary for administration of the social-economical and cultural development on the current territory.</p>

Now, Ukraine continues to conduct a reformation. On the basis of the afore-mentioned documents, the main problems in Ukraine in the direction of 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:

1. The democratic system of the 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 the local from the 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 clear definition of functions and responsibilities of the local self-government and the 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 full 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 – Constitution of Ukraine. In practice, the principle of 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 real achievement of local autonomy.

Pyhtinskij (2009) has defined the main economical problems of the current reformation in Ukraine. By the author’s opinion, they are:

1. Lack of financial resources for development of territorial communities;
2. Ineffective interbudget 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 economical 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, legal support and political will for it. The main problems of the current state of local self-government in Ukraine are in the sphere of legislation. Practically, different working groups are organized on these issues every year in the country, and they prepare different proposals, develop conceptions 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 the state regional policy in Ukraine” by the experts of the Council of Europe (2009), a new conception 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”. Significant part of this recommendation is dedicated not only to the issues of development of local democracy, but to the problems and ways of creating and providing conditions for thorough development of the local and regional self-government as the main element and display of real democracy. The main proposals and recommendations of the Council of Europe were related to:

1. Administrative and territorial organization of the country and introduction of a system of regional self-government;
2. Division of power and responsibilities between local authorities: bodies of executive power and local self-government;
3. Providing local self-governmental bodies with necessary resources for execution of their responsibilities;
4. Improvement of the system of legal protection of local self-government, etc.

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 clear division of local power is not adopted. Its adoption could help to avoid significant contradictions in the current legislation as 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 an intermediate level between local and state authorities, is not functioning effectively. The mechanisms of representation of communities on this level (regional), as well as a clear distinction of the local from regional self-government and the latter from the peripheral state executive powers still require its constitutional recognition. In Ukraine, it was previously noted that there

was a problem of clear definition of 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 in full measure. The delegated responsibilities usually do not receive the relevant financial support. This problem was discussed in many conferences on local decision-making, in most reports of the Mayors of Ukrainian cities, but the final solution was not 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 (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 mechanisms of realization of independence and autonomy of local self-government, particularly in the process of decision-making, are not precisely defined.

In spite of the exit of some problems, Ukraine has some positive examples and good practices of local decision-making. An activity of the local self-governmental authorities is more transparent in recent years than in past years. Ukraine has the examples of effective collaboration of the municipalities with the public in their day-to-day work. However, effective activity of local self-government bodies and local state authorities in Ukraine will be possible only with clear legislative division of their powers and responsibility. At present, there is a 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.

On the current stage of development of Ukraine, the local self-government bodies do not have sufficient powers for effective activity on the relevant territories. For today, it is extremely important to give more independence to the 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 the local self-government, the administration of local and some national affairs must be carried out by delegation of powers. However, together with this delegation, it is necessary to further define, expressly, the financial resources, as well as responsibilities and mechanisms of control. With this connection, there will be need to give to the local self-governmental bodies, wider power for solution of the issues of local development and to grant the local state administrators, especially control-observant, functions as representatives of state on the local level.

Public participation in local decision-making in Ukraine

Public participation in the process of decision-making is an important element of the transparency of the power and development of democracy and the 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, going in the direction of strengthening and development of democracy. For this purpose, 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 on the local level of government. For example, in item 5 of the Constitution of Ukraine, it can be seen that one of the main sources of power in Ukraine is the people.

People implement their power directly and by the bodies of public administration and local self-government. For development of the civil society in Ukraine, item 36 of the Constitution shows that, Ukrainian citizens have the right and opportunity to join political parties, non-governmental associations and professional units. In item 40, citizens have an opportunity to circulate the bodies of public administration and local self-government for solutions of their problems, while in item 69, the forms of the people's wills are appointed: "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:

1. "On local self-government in Ukraine";
2. "On local state administrations";
3. "On appeals of the citizens";
4. "On information";
5. "On order of covering the activity of public administration and local government's bodies of Ukraine in the media";
6. "On the status of deputies of local councils";
7. "On the bodies of self-organization of the citizens", etc.

Also, the country has some international documents in the sphere of transparency of power and development of democracy, which are ratified by Ukraine and therefore, are part of national legislation.

1. European Charter of Local Government (ratified in 1997).
2. Convention about the protection of citizens' rights and main freedoms (European Convention of citizens' rights)

(ratified in 1997).

3. Common convention of citizens' rights (ratified in 1950).
4. 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, defense 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 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 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 used it. There are some reasons for this:

1. The disinclination of power 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 dread of public servants that citizens, by their participation, will delay the process of decision making;
4. The lack of 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 on the central level of government).

The significant problem hindering local democracy in Ukraine in the last ten years was the very big centralization of power. At the same time, an activity of the governmental authorities is currently more transparent than in past years. In Ukraine, there are some cities which are examples of effective collaboration with the public in the day-to-day work. These cities are Berdiansk, Komsomolsk, Slavytuch, etc. The Mayors of Ukrainian cities have an opportunity to discuss their

experience and good practice, as well as their problems, by one of the new projects, "Workshop of the municipal development", which is now working in Ukraine. This project has two directions:

1. This workshop serves as a place where the Mayors of the cities and professionals in the field of Local Government and Public Administration can discuss the current problems, the ways of its solution and the practical experience of their cities, as well as present new projects and programs.
2. The young professionals in the field of local government's activity and policy making have an opportunity to discuss their problems and successes, and develop and discuss their ideas about the ways of municipal development.

Positive aspects of public participation in local decision making in Ukraine:

1. More effective and active public participation on the local level of government than on the central level;
2. Existence of the necessary basis for legislation;
3. Moral preparedness of citizens.

The example of real relationship and partnership between public and power authorities, for improving the policy implementation in Ukraine, is the All-Ukrainian Municipal Hearings, which were conducted by the Foundation for Local Self-Government of Ukraine, office of the President of Ukraine. Traditionally, in the 'hearings', part of the representatives come from the Administration of the President of Ukraine, Cabinet of Ministry and Supreme Council of Ukraine, the Mayors of the cities, the Heads of the state local administrations, scientists and the public (representatives from non-governmental organizations). Hearings have the real influence, because they do not only discuss the problems of the development of local government and local democracy in Ukraine, but also take the concrete decisions, for practical implementation. It is the example of the permanent and effective interaction between scientists and public officials from all levels of government, local government's employees and a wide range of the public. The results of some from these 'hearings' are:

1. As a result of the proposals of the 'hearings', participants accepted the decrees of the President of Ukraine "On the Conception of the state regional policy" (May 25, 2001) and "On the state support of the Local Government development in Ukraine" (August 30, 2001).
2. The non-governmental associations were created in the sphere of local and regional development by: Ukrainian Municipal Academy (1999), All-Ukrainian Association of the leaders of local and regional powers in

Ukraine (1999), The Congress of Local and Regional powers in Ukraine (2000), Ukrainian Municipal Club (2000), The Workshop of Municipal management (2001), etc.

3. The 9th Hearings (2003) open a new page in the development of democracy in Ukraine. It was the first example for conducting the professional-public expertise of the All-Ukrainian Reform (The Reform of Housing and Municipal Economy).

After preparation of this reform by the Department of Housing and Municipal Economy, it was put for discussion on the Hearings. Along the length of 4 days, about 300 participants were working in small groups and were discussing all points of the Reform. Practically, all 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, has noted 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 towards 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 way.

ACKNOWLEDGEMENTS

This research was conducted with the support of the Central European University Special and Extension Programs. The opinions expressed herein are the author's own and do not necessarily express the views of CEU. The author acknowledges the staff of CEU Special and Extension Programs and the Department of Public Policy for their assistance and advice.

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