

UKRAINIAN LOCAL GOVERNMENT AND COUNCIL OF EUROPE'S STANDARDS: HUMAN RIGHTS PROTECTION AND DECENTRALISATION AT THE TIMES OF MILITARISATION

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Abstract. The *subject of the study* is the relationship between Ukrainian local government structures, municipal standards set by the Council of Europe, and their intersection with human rights and decentralisation policies, especially in the context of ongoing militarisation in certain regions of Ukraine. The *study aims* to analyse how these elements interact and influence each other in the Ukrainian governance system, exploring the legal, policy and practical aspects of this complex interaction. *Methodology.* The methodology of a study involves a combination of research methods and approaches in order to comprehensively investigate the subject matter. In addition to the legal analysis, the authors presented the results of the document analysis. Also, because the Ukrainian decentralisation reform has had a major impact on most spheres of local life, the authors have chosen an interdisciplinary approach: given the complexity of the issue, this approach helps to incorporate elements of law, economics and international relations to provide a holistic understanding of the issues at hand. The results of the study showed that: a) the Council of Europe currently lacks human rights standards that are integrated with its municipal standards. This is a significant gap that could be strategically addressed, given the potential of local government bodies in the field of human rights protection; b) Ukraine would benefit from the development of a comprehensive framework outlining actions to be taken by local government bodies to protect human rights and facilitate the implementation of European Court of Human Rights judgments. Despite the pervasive effects of militarisation throughout the country, post-conflict reconstruction will require the continuation of these policies. This is particularly important as Ukraine seeks to rebuild the nation and resume the reforms that were underway before the outbreak of conflict, including municipal reform with a focus on financial decentralisation and reform of the implementation of ECHR judgments. *Conclusion.* In summary, militarisation in certain regions of Ukraine has created a number of complex challenges for local governments, affecting security, governance, human rights and social services. The protracted nature of the conflict has made it even more difficult to address these issues. Finding sustainable solutions to these challenges requires a coordinated effort involving local authorities, the national government, international organisations and civil society to promote stability, protect human rights and rebuild affected communities.

Key words: local governance, municipal governance, local self-government, decentralisation, financial decentralisation, militarisation, Council of Europe standards, human rights.

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1. Introduction

A profound transformation has taken place in the evolving landscape of Ukrainian governance, where the imperatives of human rights protection, decentralisation and militarisation intersect. This transformation, rooted in the principles and standards of the Council of Europe, has led to a redefinition of the dynamics of local government that is unprecedented in its significance since Ukraine's declaration of independence in 1991.

The article explores the complex web of legal reforms and policy changes that have shaped the development of local governance in Ukraine. It covers economics and law. Against a backdrop of continued militarisation in certain regions, the Ukrainian government has been faced with the daunting task of protecting the rights of its citizens, empowering local communities and upholding European standards of governance.

The *subject of the study* is the relationship between Ukrainian local government structures, municipal standards set by the Council of Europe, and their intersection with human rights and decentralisation policies, especially in the context of ongoing militarisation in certain regions of Ukraine. The purpose of the study is to analyse how these elements interact and influence each other in the Ukrainian governance system, exploring the legal, policy and practical aspects of this complex interaction.

Methodology. The methodology of a study involves a combination of research methods and approaches to investigate the subject matter comprehensively. For this study, the authors conducted an extensive literature review, but only the most relevant publications are cited. This is due to the fact that the topic of the article is best reflected by a legal analysis – therefore, the authors review relevant Ukrainian laws, regulations and international agreements, with a particular focus on those related to local self-government, human rights and decentralisation. The authors analyse how this legal framework complies with Council of Europe standards and how it responds to the challenges posed by militarisation. Alongside the legal analysis, the authors present the results of the document analysis.

Also, because the Ukrainian decentralisation reform has had a major impact on most spheres of local life, the authors have chosen an interdisciplinary approach: given the complexity of the issue, this approach helps to incorporate elements of law, economics and international relations to provide a holistic understanding of the issues at stake. By combining these research methods and approaches, the study is able to provide a comprehensive and nuanced analysis of the issue, shedding light on the complex dynamics between local governance, human rights, decentralisation and militarisation in Ukraine.

By exploring these issues and their intersections, this article seeks to provide a comprehensive understanding of the challenges and opportunities that have arisen in the context of Ukrainian local governance. It sheds light on the country's journey towards aligning its governance practices with European standards while grappling with the exigencies of militarisation. Through a careful analysis of legal frameworks, policy developments and their practical implications, this article contributes to the ongoing discourse on the evolution of Ukrainian governance in an era where human rights, decentralisation and militarisation converge.

2. Council of Europe Standards on Human Rights and Local Self-Government

This article examines the multifaceted landscape of Ukrainian governance with a particular focus on the implications and imperatives arising from the combination of three distinct but interrelated themes:

– *Decentralisation.* Ukraine's decentralisation reform represents a paradigm shift in governance dynamics. It empowers local governments by giving them greater autonomy and financial resources. This paper examines the impact of decentralisation on the distribution of power, decision-making and service delivery at the local level.

– *Human rights protection.* Ensuring the protection of human rights is a cornerstone of modern governance. In Ukraine, the obligation to respect these rights has been further strengthened by bringing its legislation in line with Council of Europe standards and conventions. This article explores the legal framework and mechanisms in place to protect the rights of Ukrainians, even in the face of the challenges posed by ongoing militarisation.

– *Militarisation.* The Ukrainian experience of militarisation in certain regions has added a layer of complexity to the landscape of local governance. This article examines how militarisation has affected the implementation of decentralisation policies and affected the rights and well-being of local populations.

The Council of Europe (CoE) is known for its human rights activities, in particular through the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (the European Convention on Human Rights) and its numerous protocols, as well as through the case law of the European Court of Human Rights (ECHR). However, it is worth noting that until now, CoE human rights standards have not been integrated into municipal standards. In the legal literature, the question has been raised more and more often recently: "Why?"

It should be emphasised that many specialists are currently discussing the existence of an implementation crisis with regard to the judgments of the ECHR. This

"implementation crisis" is being addressed at both European and national levels. Various proposals have been put forward to address this crisis. Some involve the introduction of new legislation and procedures, while others are more institutional in nature. In addition, a growing number of scholars are proposing not only greater involvement of existing actors, but also the inclusion of new actors in the implementation process. These new actors may include national parliaments, national courts and even NGOs.

As for local government bodies, they are often underestimated in the context of human rights protection in general and the implementation of ECHR judgments in particular. Only a few scholars have conducted research on their potential in this area (see Lambert Abdelgawad, 2008, 2016; Mishyna, 2022; Amelicheva and others, 2021, etc.). This topic represents a new and innovative area of research, not only in the Ukrainian scientific literature, but also in the broader European scientific literature.

With regard to the CoE municipal standards, they are represented by the European Charter of Local Self-Government of 1985. In the official publications of the Council of Europe, this Charter is characterised as follows: "The Charter has become an important treaty for the protection of the rights of local and regional authorities, such as the right to self-government, the right to elect local bodies, the right to exercise their powers, to have administrative structures and financial resources, as well as the right of access to justice in case of interference by other levels of government." (European Charter of Local Self-Government, 2017 (1))

For the purposes of this research, the most important parts of the 1985 Charter are as follows:

- Article 3(1) demonstrates the link between local self-government and human rights ("Local self-government shall mean the right and capacity of local authorities to regulate and administer, within the limits of the law, a substantial part of the public affairs, under their own responsibility and in the interests of their local population." (Charter, 1985));
- Article 4(2), which states the following: "Local authorities shall, within the limits of the law, have full discretion to exercise their initiative in respect of any matter not excluded from their competence and not reserved to any other authority." (Charter, 1985);
- Article 9 "Financial Resources of Local Self-Government Bodies" – these resources actually allow local self-government bodies to effectively participate in the protection of human rights in general and in the implementation of ECHR judgments in particular.

One might think that the Preamble is also of great interest, but this is not the case. It is important to emphasise that the phrase "human rights" is not used in the 1985 Charter. The Preamble emphasises only that "the right of citizens to take part in the conduct

of public affairs is one of the democratic principles shared by all the member states of the Council of Europe" (Charter, 1985).

The Congress of Local and Regional Authorities, the body of the Council of Europe that adopted the 1985 Charter, oversees the implementation of the provisions of the Charter. "Its main role is to strengthen and monitor the development of local and regional democracy. In this context, it monitors the compliance of member states with the European Charter of Local Self-Government." (European Charter of Local Self-Government, 2017, p. 5) From a global perspective, "the Congress contributes to the achievement of the Council of Europe's key objectives at the local and regional levels aimed at strengthening democracy in the light of the European Charter of Local Self-Government and its Additional Protocol on the right to participate in local government affairs" (European Charter of Local Self-Government, 2017, p. 9). It is important to take into account the fact emphasised in the official interpretation of the 1985 Charter: "The Charter does not provide for a system of institutional control over its application, requiring the parties to provide all necessary information on legislative or other measures taken to comply with the Charter." (European Charter of Local Self-Government, 2017, pp. 40–41) Thus, in contrast to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, a slightly different approach was taken to protect the 1985 Charter.

Thus, the CoE currently has no human rights standards that would be consolidated with municipal standards. This is a gap that would be useful to fill, as local governments have the potential to protect human rights.

3. Decentralisation Reform and the Economics of the Ukrainian Local Government

The Council of Europe's Standards of Local Self-Government laid the groundwork for the final phase of Ukraine's municipal reform, known as the "Decentralisation Reform", which focused on delegation of powers and local finance. The decentralisation reform brings Ukraine closer to European practices and standards of governance, as it reflects the principles endorsed by the Council of Europe and the European Union. It is seen as a step towards harmonising Ukraine's governance structures with those of its European neighbours.

The decentralisation of state power and financial authority to local governments is a major reform in Ukraine that has had a profound impact on the country's governance and administrative structure. This reform represents a fundamental shift in the distribution of power and resources within the

country, marking one of the most transformative changes since Ukraine gained independence in 1991.

What does the current reform (currently suspended due to the war) envisage? First of all, it involves the voluntary amalgamation and consolidation of hromadas, as well as the introduction of new powers and opportunities for local authorities. However, it is important to note that these aspects have already been reformed. The new and main focus has been on financial decentralisation.

Thus, this phase of the decentralisation reform started in 2015 but was not fully completed due to the interruptions caused by the war. However, it is important to emphasise that although the military conflict temporarily suspended the decentralisation reform in terms of the division of powers between local state authorities and local self-government bodies, the financial decentralisation component was successfully implemented.

Fiscal decentralisation is based on the financial autonomy of local governments. In this respect, the Ukrainian reform drew inspiration from European municipal standards, as already highlighted in this article when discussing the 1985 Charter, which contains Article 9 on this issue. The reform is aimed at a deeper implementation of the first two paragraphs of this article in national legislation. The first paragraph states that: "Local self-government bodies shall have the right, within the framework of national economic policy, to sufficient financial resources of their own, which they may freely dispose of within the limits of their powers." The second paragraph states the following: "The financial resources of local authorities shall be adequate to fulfil the duties prescribed by the constitution and the law." (Charter, 1985)

With regard to financial decentralisation, it is important to emphasise that, in addition to powers, decentralisation also involves the transfer of financial resources from the central government to local governments. This financial autonomy allows local governments to finance local initiatives, invest in infrastructure and provide basic services without being heavily dependent on central government funding.

Until 1 January 2015, local budgets were fully dependent on the state budget, but now they have their own revenues, which became possible due to the adoption of a number of laws and amendments to the Budget and Tax Codes of Ukraine. On 28 December 2014, the following important laws were adopted in Ukraine:

- The Law of Ukraine "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine on Tax Reform" No. 79-VIII and "On Amendments to the Budget Code of Ukraine on Reform of Intergovernmental Fiscal Relations";
- The Law of Ukraine "On Amendments to the Budget Code of Ukraine on Peculiarities of Formation and

Execution of Budgets of Amalgamated Hromadas" No. 837-VIII of 26 November 2015.

Financial experts are very positive about the results of this reform. For example, they state that "the successes of the reform of local self-government and territorial powers are undeniable. However, it is too early to speculate on the outcome of the reform. Much depends on decisions regarding constitutional amendments, the adoption of the Municipal Code, and how future decisions will be implemented at all levels" (Kogut & Kovacs-Rump, 2021). However, several factors need to be considered.

Primarily, a significant amount of property, including municipal assets, was destroyed during the war in Ukraine, resulting in other material and financial losses. This situation has at least diminished the success of fiscal decentralisation, if not put local governments in a worse position than before 2014.

Moreover, the authors of the cited article (Kogut & Kovacs-Rump) place too many expectations on the modernisation of legislation, including constitutional amendments and the introduction of the Municipal Code of Ukraine. It is well known that the existence of adequate legislation does not necessarily guarantee a successful outcome of a reform.

4. Human Rights Protection and Ukrainian Local Government

As announced at the beginning of the Decentralisation Reform, the desire to modernise the system of public administration and territorial organisation of power in Ukraine is based on the main strategic goal of establishing effective local self-government and creating conditions conducive to improving the quality of life of its citizens. In essence, this goal is aimed at empowering local communities, strengthening their capacity for self-governance and, ultimately, ensuring that residents have access to quality and easily accessible public services.

Overall, the decentralisation reform in Ukraine represents a significant shift towards a more democratic, accountable and responsive system of governance. While challenges and complexities remain, the process has the potential to improve the lives of Ukrainians by giving them greater control over their local communities and promoting grassroots development.

So far, only a part of this reform has been implemented, namely the aspect related to financial decentralisation. The reform has resulted in an increased interest of local governments in increasing local budget revenues, finding reserves to fill them, and improving the efficiency of tax and fee administration. However, the results of this part of the reform are currently hardly noticeable due to the war in Ukraine, which has been going on for over a year.

The period of militarisation has clearly demonstrated the significant influence that local authorities can have and their invaluable role in helping people in times of emergency, especially when they have the necessary resources through financial decentralisation. When the war eventually ends, there will be an urgent need to continue the implementation of the Council of Europe's municipal standards at the local level, addressing those provisions of the 1985 Charter that remain unimplemented.

At the same time, these efforts can go hand in hand with the implementation of the Council of Europe's human rights standards, including those enshrined in the ECHR judgments. It is important that the reform process in this area is ongoing. In February 2022, the municipal reform was temporarily suspended, but the commitment to implementing Council of Europe human rights standards, including the implementation of ECHR judgments, remains unwavering. In October 2022, the Verkhovna Rada, Ukraine's parliament, amended Ukrainian legislation, laying the legal groundwork for this implementation.

This two-pronged approach, which encompasses both municipal and human rights standards, has enormous potential to shape Ukraine's governance and protect the rights of its citizens, even in the post-war period.

The Council of Europe, despite the challenges facing Ukraine in wartime, remains firmly committed to overseeing the implementation of ECHR judgments in the country. Statistics show that in 2020, 5233 ECHR judgments remained unenforced. The duration of the decision implementation process varies: approximately 40% of decisions are implemented in less than 2 years, another 40% take between 2 and 5 years, and the rest take more than 5 years (Committee of Ministers of the Council of Europe, 2021). Of the 197 ECHR judgments delivered against Ukraine in 2021, an impressive 194 judgments (98.5% of cases in the final version) found at least one violation, highlighting the urgent need for attention and action (Committee of Ministers of the Council of Europe, 2021).

In this challenging landscape, the continuation of municipal and human rights reform in Ukraine remains unwavering, with the potential to significantly impact the country's governance and protection of citizens' rights in the post-war period.

5. Conclusions

The results of the research presented in Chapter 2 of this article have shown that the Council of Europe (CoE) currently lacks human rights standards integrated with municipal standards. This is a significant gap that could be strategically addressed, given the potential of local governments to protect human rights.

The results of the study presented in Chapter 3 of this article illustrate that since gaining independence in 1991, Ukraine has been primarily focused on European development, which is indicative of its commitment to implementing Council of Europe standards. Ukrainian local government practice has made significant progress in aligning with Council of Europe standards, especially since the start of the decentralisation reform in 2015. Since 2015, significant efforts have been made to advance decentralisation reform in line with these standards. However, as of early 2022, the reform is still ongoing, with the possible exception of fiscal decentralisation. This aspect of the reform has markedly increased the financial autonomy of local governments, allowing them to generate and manage their own revenues in line with Council of Europe recommendations. This progress has addressed some of the long-standing problems associated with underfunding of local services.

Nevertheless, there are areas in which compliance with the Council of Europe standards is significant, but at the same time there are gaps and challenges that remain. The devolution of powers from the central government to local authorities, which is a fundamental principle of the Council of Europe's municipal standards, has resulted in greater autonomy for local governments in decision-making, especially in areas such as education, healthcare and infrastructure. Due to the ongoing war, municipal reform has been temporarily suspended, but is expected to resume after the conflict ends.

The findings of the study presented in Chapter 4 of the paper highlight that Ukraine still faces various gaps and challenges when it comes to implementing CoE standards:

- a) The ongoing armed conflict has had a significant impact on local governance, disrupting the functioning of local authorities, creating problems in the delivery of public services and impeding the implementation of reforms.
- b) Whilst Ukraine has undertaken legal reforms to bring it in line with Council of Europe standards, the effective implementation of these reforms at the local level remains a challenge.
- c) Ukraine faces difficulties in implementing the judgments of the European Court of Human Rights (ECHR), leading to ongoing concerns about delays in the implementation of human rights standards.

The authors claim that Ukraine would benefit from a comprehensive framework that would guide local government actions to protect human rights and facilitate the implementation of ECHR judgments. Despite the widespread effects of militarisation across the country, these actions will be crucial for post-war reconstruction. This is particularly relevant as Ukraine seeks to rebuild the country and resume

previously initiated reforms, including municipal reform with a focus on financial decentralisation and reforms related to the implementation of ECHR judgments.

In summary, militarisation in Ukraine has created a number of complex challenges for local governments that affect security, governance, human rights and

social services. The protracted nature of the conflict has exacerbated these problems. Overcoming these challenges and finding lasting solutions requires coordinated efforts involving local authorities, the national government, international organisations and civil society to promote stability, protect human rights and rebuild affected communities.

References:

- Amelicheva, L., Martyniuk, O., Pyroha, I., Qaracayev, C., & Myroshnychenko, V. (2021). Implementation of constitutional human rights and social guarantees of security in the context of digitalization. *Amazonia Investiga*, no. 10 (45), pp. 265–271.
- European Charter of Local Self-Government 1985. Available at: <https://rm.coe.int/168007a088> (accessed October, 1, 2023).
- Kogut, J., & Kovacs-Rump, H. (2021). Financial decentralization in Ukraine and its impact on the formation of local budgets: achievements and shortcomings. Available at: http://www.economy.nayka.com.ua/pdf/9_2021/77.pdf (accessed October, 1, 2023). (in Ukrainian)
- Lambert Abdelgawad, E. (2008). *The Execution of Judgments of the European Court of Human Rights 2nd ed.* Strasbourg: Council of Europe. *Human Rights Files*, no. 19, 88 p.
- Lambert Abdelgawad, E. (2016). Dialogue and the Implementation of the European Court of Human Rights' Judgments. *Netherlands Quarterly of Human Rights*, no. 34(4), pp. 340–363.
- Leheza, Yu., Kornienko, G., & Chabanenko, M. (2018). Assessment of the economic efficiency of its application at enterprises. *Baltic Journal of Economic Studies*, vol. 4 (3), pp. 123–132. DOI: <https://doi.org/10.30525/2256-0742/2018-4-3-123-132>
- Leheza, Yu., & Surilova, O. (2019). Legal regulation of the application of economic mechanisms for ensuring the rational use of natural resources: the experience of foreign countries. *Baltic Journal of Economic Studies*, vol. 5 (3), pp. 99–103. DOI: <https://doi.org/10.30525/2256-0742/2019-5-3-99-103>
- Mishyna, N. (2022). Ukrainian Legislation on Associations: Constitutional Axiology And The European Court Of Human Rights' Case *Koretsky and Others v. Ukraine*. *Research Papers of National University "Odesa Law Academy"*, vol. 31, pp. 57–63.
- Mishyna, N. (2022). Decentralization: European court of human rights' judgements implementation. *Research Papers of National University "Odesa Law Academy"*, vol. 32, pp. 94–99.
- The European Court of Human Rights in Facts & Figures (2021). Available at: https://www.echr.coe.int/Documents/Facts_Figures_2021_ENG.pdf (accessed October, 1, 2023).
- Qaracayev, C. (2022). Local Self-government in the Republic of Azerbaijan: Problems of the Administrative Supervision. *Scientific Bulletin of the International Humanities University. Series: Jurisprudence*, no. 57, pp. 24–27.
- Qaracayev, C. (2022). Axiological Function of The Constitutional Court of The Republic of Azerbaijan. *Juris Europensis Scientia*, no. 3, pp. 135–138.
- European Charter of Local Self-Government and Explanatory Report. Official publication. European Charter of Local Self-Government. Council of Europe: Strasbourg, 2017, pp. 34–56.

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