

# UKRAINIAN LOCAL GOVERNMENT, HUMAN RIGHTS PROTECTION AND COUNCIL OF EUROPE STANDARDS: THE PRINCIPLE OF SUBSIDIARITY

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**Abstract.** This article holds considerable significance as it thoroughly analyses the combination of local governance, human rights protection and the implementation of the principle of subsidiarity in Ukraine. It offers valuable insights into the complex dynamics between these components within the Council of Europe standards. The study of the principle of subsidiarity in the context of human rights at the local level makes a significant contribution to the broader discourse on good governance and legal frameworks. The primary *objective* of the article is to provide a thorough and nuanced understanding of the complex interplay between municipal human rights, the principle of subsidiarity, and the involvement of local and international entities in the protection of human rights in Ukraine. The study aims to achieve several goals: to delve into the principle of subsidiarity, to critically evaluate inaccuracies in the legal literature, and to highlight the role of the Council of Europe in promoting the principle of subsidiarity in the Ukrainian context. The *research methodology* is a mixture of legal analysis and conceptual exploration. In terms of the literature review, the article draws on the insights of various legal scholars and experts, including but not limited to B. Kofman, A. Krusyan, S. Kvitka, among others. Existing legal literature and academic works are reviewed in order to gain perspectives from different viewpoints, theories and analyses relevant to the research topic. *Conclusion.* This paper affirms that the Council of Europe and its member states follow the principle of subsidiarity in the protection of human rights at the local level. This involves a deliberate focus on the delineation of competences within local self-government and the provision of complementary (subsidiary) protection through the mechanisms of the European Court of Human Rights. The following sections explore various facets of the article in detail, offering a comprehensive analysis of the localisation of human rights protection, the complexities of subsidiarity in Ukrainian legal literature, and the crucial role played by the Council of Europe in promoting subsidiarity through various mechanisms.

**Key words:** local governance, municipal governance, local government, decentralisation, financial decentralisation, democracy, indirect democracy, Council of Europe standards, human rights.

**JEL Classification:** K30, K38

## 1. Introduction

This topic is highly relevant as it critically examines the intersection of local governance, human rights protection and the application of the principle of subsidiarity in the Ukrainian context, providing valuable

insights into the dynamics between these elements within the framework of Council of Europe standards. Exploring the principle of subsidiarity in relation to human rights at the local level contributes to the broader discourse on effective governance and legal frameworks.

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The *aim of the article* is to provide a comprehensive and nuanced understanding of the complex interplay between municipal human rights, the principle of subsidiarity and the involvement of local and international bodies in the protection of human rights in Ukraine. The objectives of the study are to examine the principle of subsidiarity, to critically assess inaccuracies in the legal literature, and to highlight the role of the Council of Europe in promoting the principle of subsidiarity in the Ukrainian context.

*Methodology.* The research methodology is a combination of legal analysis and conceptual exploration. As for the literature review, the article refers to the exploration of concepts and perspectives of various legal scholars and experts, such as B. Kofman, A. Krusyan, S. Kvitka, and others. The existing legal literature and academic works are reviewed in order to gain insights into different viewpoints, theories and analyses related to the research topic.

## 2. Localisation of Human Rights and the Role of the Council of Europe

In order to characterise the localisation of the system of human rights protection in Ukraine (formation and expansion of the list of municipal human rights), it is advisable to refer to the definition of the concept of "municipal human rights". One of the most comprehensive definitions of municipal human rights was provided by B. Kofman. According to the researcher, municipal human rights (of an individual, a resident member of a hromada) should be understood as a set of subjective possibilities of a person arising within the hromada in the conditions of local self-government and functioning of public municipal authorities. These rights are aimed at satisfying the aspirations, needs and interests of its members in accordance with their existential orientations, realised throughout the individual's life cycle and implemented through the use of their constitutional status. This is achieved through the local interpretation of constitutional rights, freedoms and duties, as well as the formation, based on their interpretation, of an independent block of rights, freedoms and duties associated with the existence, functioning and activities of individuals in the conditions of local democracy (Kofman, 2019).

The first direction of the localisation of the system of human rights protection in Ukraine, i.e., the creation and expansion of the list of municipal human rights, is already being implemented. Its deepening and intensification is possible in connection with the second direction, characterised above as the further involvement of local self-government bodies in the protection of human rights. Such involvement

in the process of reforming the decentralisation of public authority can take place with the further implementation of the principle of subsidiarity.

The name of this principle has Latin roots. The word 'subsidiary' in Roman military affairs was interpreted as a balanced assistance when it was necessary: a) to provide help in case of need (rescue from possible defeat), b) to deliver a decisive blow during a battle in order to win the battle. It is important to note that the Latin origin of the word "subsidiarity" indicates the following two different meanings: to be ready to intervene and to intervene in order to support. S. Kvitka suggests to consider that "subsidiarity (from Latin 'subsidiaries' – auxiliary) is an organisational and legal principle according to which tasks should be solved at the lowest, small or distant level from the centre, where their solution is possible and effective. The idea of subsidiarity is related to decentralisation" (Kvitka, 2015, p. 28). Both examples show the essence of the principle of subsidiarity.

The Ukrainian legal literature currently has a dual approach to analysing the concept of the principle of subsidiarity and determining the vectors of its research.

The first vector is European. Within this vector, the principle of subsidiarity has been studied in Ukrainian legal science mainly by experts in EU law. However, not only experts of EU law acknowledge its presence, but it is also recognised in the documents of the Council of Europe, which states that the principle of subsidiarity is the principle of the European Charter of Local Self-Government.

To further integrate the Council of Europe into the discussion of the principle of subsidiarity, the following points could be considered:

A. The role of the European Charter of Local Self-Government in promoting the principle of subsidiarity. This Charter, adopted by the Council of Europe, serves as a fundamental document underlining the importance of local self-government and subsidiarity. The Charter recognises and supports the idea that decisions should be taken as locally as possible, in accordance with the principle of subsidiarity.

B. Recommendations and monitoring by the Council of Europe. The Council of Europe's recommendations and monitoring mechanisms relate to the principle of subsidiarity. The Council of Europe often provides guidance to member states on the effective implementation of principles, including subsidiarity, to ensure the protection of human rights. The Council of Europe also monitors and evaluates member states' compliance with these principles, thereby reinforcing the importance of subsidiarity in promoting democratic governance and the protection of human rights.

C. The European Court of Human Rights (ECHR). This body plays an important role in the interpretation

and enforcement of human rights within the framework of the Council of Europe. The decisions of the ECHR contribute to the development and application of the principle of subsidiarity in the context of human rights protection. The ECHR has also emphasised the importance of local remedies and decision-making in addressing human rights issues.

D. Council of Europe standards and guidelines. There are many Council of Europe standards, guidelines or resolutions that explicitly promote the principle of subsidiarity.

Thus, through its legal instruments, recommendations and monitoring mechanisms, the Council of Europe contributes to the localisation of human rights and the application of the principle of subsidiarity in the Ukrainian context.

The second vector is to analyse the implementation and potential of the subsidiarity principle at national level.

### **3. The Principle of Subsidiarity in Ukrainian Municipal Literature**

In the Ukrainian legal literature, this principle is mostly studied in the municipal context.

The issue of interaction between state authorities and local self-government bodies, including representative bodies, was studied at the monographic level by Professor A. Krusyan. In her research there are two important provisions.

The first provision refers to the fact that it considers it important to "distinguish and establish by law the autonomous spheres of competence of the two centres of public power" (Krusyan, 1999, p. 12). The nature and content of this principle are described by researchers without neglecting the concepts of "powers", "competence" and the like.

For example, Y. Bohiv believes that "provisions on the need to ensure the principle of subsidiarity of local self-government in the process of decentralisation through: 1) clear constitutional formulations on local issues; 2) distribution of competences to different levels of local self-government directly in the text of the Basic Law; 3) definition of the functions and powers of the hromada that ensure the financial and property autonomy of local self-government" (Bohiv, 2020, p. 7).

Thus, in characterising the principle of subsidiarity, Y. Bohiv uses the concepts of "local issues", "competence", "functions" and "powers". This fully confirms the thesis formulated above regarding the "competence load" of the subsidiarity principle.

The second provision of Professor A. Krusyan's study, which is important for the institution of representative democracy, concerns her author's concept of the nature (types) of interaction between local executive authorities and local self-government

bodies, set out in Chapter 2.2 of the analysed monograph. A. Krusyan's proposals can be applied to the interaction of representative bodies of state power and local self-government.

In her work she provides a theoretical analysis of the interaction of coordination, subordination and recoordination. Thus, according to A. Krusyan, the interaction between state authorities and local self-government bodies (including representative bodies) occurs through the application of: coordination; subordination; recoordination.

Professor Krusyan gives priority to coordination interaction. When it comes to relations between representative bodies of state power (Head of State, Parliament) and representative bodies of local self-government (local councils, heads of villages, towns, cities), it is more appropriate to indicate these methods of interaction in a different order. This suggestion is made for the first time in Ukrainian legal literature.

The most common type of interaction should be placed in the first position and it is the subordination interaction. According to A. Krusyan, such interaction is characterised by the fact that it is carried out between entities that are in subordinate structural relations, between which there are managerial relations functioning on the principle of "verticalisation". Examples of such interaction include legislative issues in particular and normative regulation as a whole, as well as the enforcement of laws and other legal acts. In addition, an example of subordination interaction between representative bodies is the appointment of local elections by the Verkhovna Rada of Ukraine. The essence of subordination interaction does not contradict the principle of subsidiarity.

Thus, S. Kvitka characterises the principle of subsidiarity as follows: "The main idea of this principle is that the central and regional authorities should intervene in the activities of local self-government bodies only to the extent and within the limits where the hromada cannot satisfy its diverse needs." (Kvitka, 2015, p. 33) This is an example of the manifestation of subsidiarity within the framework of subordination. It is important to note that such intervention is possible only in cases provided for by law, within the limits established by law and in the manner determined by law.

Researchers note that the principle of subsidiarity is a principle of decentralisation, according to which social problems should be solved at the lowest and furthest level from the centre. Moreover, the central authority should play a subsidiary (auxiliary) rather than a subordinate (subordinating) role. Therefore, the principle of subsidiarity is a decentralisation principle from the perspective of central authority. If implemented consistently, this principle can work

quite effectively. There is an error in this statement, which lies in the fact that the "central authority" cannot have only a "subsidiary (auxiliary)" role with regard to local self-government. After all, it is the bodies of state power, including representative bodies, that create the legal regulations on the basis of which local self-government bodies operate. State authorities also exercise control over the activities of local authorities, including representative bodies. And these are only two examples among many.

The quoted passage rightly asserts that the "central authority" can play a subsidiary (auxiliary) role with regard to local self-government. Typically, this is expressed in coordinating interactions.

In the second place in terms of prevalence it is appropriate to place coordination interaction. According to A. Krusyan, the main task of coordination interaction is the cooperation of managerial efforts for more successful solution of common tasks. This type of interaction should take place in those spheres of public life which are of equal importance for the state as a whole and for hromadas in particular, i.e., which affect common interests (state and local). The most vivid examples of coordination interaction are joint programmes of representative public authorities. The nature of coordination interaction does not conflict with the principle of subsidiarity.

In the third and last position it is advisable to place recoordination interaction between representative bodies. In legal publications, this type of interaction is characterised as follows: recoordination interaction of subjects of constitutional legal relations is manifested in the form of feedback, when one subject in the exercise of its own powers must coordinate with another, when some bodies initiate contact with others. This is ensured by the right of representatives of certain bodies to be present with a consultative vote at the meetings of other bodies, the right to appeal to the court for the annulment of acts, etc., which also has a recoordination character (Leheza, 2018).

Examples of reconciliation are few and far between and exist within the same level, either at the national or local level. An example of recoordination may be the early termination of the powers of the Verkhovna Rada of Ukraine by the President of Ukraine (horizontal recoordination). An example of vertical recoordination may be the appeal by the President of Ukraine to the Constitutional Court of Ukraine on the constitutionality of acts of the Supreme Council of the Autonomous Republic of Crimea, as provided for in the last part of Article 137 of the Constitution of Ukraine.

Authors are often imprecise in defining the principle of subsidiarity. This inaccuracy is typical of Ukrainian legal literature of the 21st century. Sometimes the

content of the principle of subsidiarity is overly democratised. For example, there is an opinion in legal literature that "the subsidiarity principle is a system of relations in which the state provides various kinds of assistance to citizens so that they can independently solve their problems on the basis of self-organisation and self-control" (Moshak, 2017, p. 40). It is unlikely that this statement can be considered correct. It is more accurate to say that the principle of subsidiarity mediates relations between public authorities at different levels in general, and thus between different representative bodies of public authority at different levels in particular.

L. Nalyvaiko and Yu. Kovbasa, like the previous author, over-democratise the principle of subsidiarity. They claim that "the introduction of this principle is possible only in the case of full decentralisation of state power in Ukraine by transferring the management and resolution of public affairs in favour of local communities" (Nalyvaiko, Kovbasa, 2015, p. 30). Perhaps the authors mean that "local communities" (hromadas) will transfer the relevant powers to their representative bodies. However, this should have been clarified.

#### **4. The Principle of Subsidiarity and the Protection of Human Rights by the Council of Europe**

The principle of subsidiarity is inherent in the Council's approach to governance and the protection of human rights.

The principle of subsidiarity generally refers to the idea that decisions and actions should be taken at the most direct or local level possible, involving higher authorities only when necessary. In the context of the Council of Europe, the principle of subsidiarity is applied to ensure that human rights are effectively protected, taking into account the diversity of legal systems and cultures in its member states.

Here are some key aspects of how the principle of subsidiarity relates to human rights protection within the Council of Europe: the European Convention on Human Rights (ECHR); national courts and institutions; monitoring mechanisms; and dialogue and cooperation.

The European Convention on Human Rights is a central instrument of the Council of Europe for the protection of human rights. The principle of subsidiarity is reflected in the idea that member states have the primary responsibility for ensuring human rights within their territories. The European Court of Human Rights (ECtHR), which operates under the auspices of the Council of Europe, serves as a last resort for individuals to seek redress when national mechanisms fail. The principle of subsidiarity encourages Member States to establish effective



national legal frameworks and institutions for the protection of human rights. National courts play an important role in interpreting and applying human rights standards, with the ECtHR acting as a back-up to address cases that cannot be resolved at the national level (Lambert Abdelgawad, 2016; Mishyna, 2022, 2023).

The Council of Europe uses monitoring mechanisms to assess member states' compliance with human rights standards. Bodies such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Commissioner for Human Rights work to address human rights issues at the national level and make recommendations for improvement.

The Council of Europe also emphasises dialogue and cooperation with member states to address human rights challenges. Through this approach, member states are encouraged to share best practices, learn from each other and work together to improve the protection of human rights.

While traditionally rooted in legal and political discourse, the principle of subsidiarity is also of considerable relevance in the economic sphere. At its core, subsidiarity emphasises the notion that decision-making power should be decentralised to the lowest effective level. In an economic context, this principle advocates local autonomy and self-governance, positing that economic decisions are best made at the level closest to the individuals and communities affected. By devolving economic responsibilities to local authorities, subsidiarity aims to promote efficient resource allocation, responsive policy-making and the tailoring of economic strategies to the specific needs of different regions. This decentralisation is in line with the principles of economic subsidiarity, which emphasise the importance of local actors in addressing economic challenges, promoting sustainable development and cultivating a diversified economic landscape (Barvinenko et al., 2023). As an overarching philosophy, the economic application of subsidiarity aims to strike a balance between centralised coordination and decentralised initiatives, fostering economic systems that are both robust and attuned to the specific needs of diverse communities.

## 5. Conclusions

The study attached to Section 2 of the article examines the localisation of the human rights protection system in Ukraine, focusing on the concept of "municipal human rights". Municipal human rights encompass the subjective possibilities of individuals within a hromada and aim to satisfy their needs and interests through a local interpretation of constitutional rights. Localisation involves the

creation and expansion of the list of municipal human rights, coupled with the involvement of local self-government bodies, in line with the principle of subsidiarity. The principle of subsidiarity, which has its roots in Latin, emphasises the decentralised solution of tasks, and its analysis involves two vectors: the European perspective, which links subsidiarity with the European Charter of Local Self-Government and the Council of Europe's standards, and the national perspective, which examines the implementation of subsidiarity at the national level. The role of the Council of Europe in promoting subsidiarity through legal instruments, recommendations and monitoring mechanisms is highlighted.

The study presented in Section 3 of the article focuses primarily on the principle of subsidiarity in the context of Ukrainian legal literature, particularly in relation to local government. Professor A. Krusyan's research on the interaction between state authorities and local self-government bodies, including representative bodies, emphasises the importance of distinguishing autonomous spheres of responsibility and proposes a conceptual framework for the nature of interactions. The analysis introduces three types of interaction – coordination, subordination and recoordination – and offers a unique perspective on their prevalence and applicability. The text critiques certain inaccuracies in the definition of the principle of subsidiarity in Ukrainian legal literature and highlights the need for a nuanced understanding that takes into account the mediation of relations between authorities at different levels.

The study presented in Section 4 of the article highlights that the Council of Europe adheres to the principle of subsidiarity in its governance and human rights protection strategy, emphasising that decisions should be taken at the local level whenever possible. This principle is evident in the application of the European Convention on Human Rights, where Member States have primary responsibility for the protection of human rights within their territories, with the European Court of Human Rights serving as a last resort. The Council uses monitoring mechanisms, national courts and cooperative dialogues to ensure effective protection of human rights and encourages Member States to establish sound legal frameworks and institutions.

To summarise, with regard to the protection of human rights at the local level, the Council of Europe (as well as its member states) adheres to the principle of subsidiarity. This means that in the context of local self-government, it emphasises the separation of powers and the provision of additional (subsidiary) protection through the activities of the European Court of Human Rights.

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