

UDC 342.6; 342.9; 352.07

DOI <https://doi.org/10.32849/2663-5313/2023.7.10>**Anastasiia Kozin,***Doctor of Philosophy in Law, Senior Researcher at the Department of Topical Issues of Philosophy of Law and Legal Linguistics (Scientific Institute of Public Law)**2a Heorhii Kirpa Street, Kyiv, Ukraine, 03055**kozinanastasiia@ukr.net***ORCID ID:** 0009-0000-5793-6852

PROBLEMS OF NON-COMPLIANCE WITH THE PRINCIPLE OF DECENTRALISATION OF POWER IN INTERACTION BETWEEN LOCAL SELF-GOVERNMENT BODIES AND EXECUTIVE AUTHORITIES

Abstract. Purpose. The purpose of the article is to study the interaction of local self-government bodies with executive bodies, to highlight the problems of non-compliance with the principle of decentralisation of power in the course of such interaction, and to propose ways to improve this process in Ukraine and mechanisms to ensure compliance with the basic principles of local self-government by the designated bodies. **Results.** The scientific article studies the observance by executive authorities of one of the main principles of local self-government - decentralisation of power in the course of interaction with local self-government bodies. The author identifies the areas of interaction and powers which provide for the need for interaction between local self-government bodies and executive authorities; and lists possible issues which are the subject of the interaction between these bodies which is not regulated by law. The problems faced by local self-government bodies in the course of or as a result of interaction with executive authorities are analysed. The article identifies the problem and highlights the issues that often lead to non-compliance by executive authorities with the principle of decentralisation of power in their interaction with local self-government bodies and suggests ways to eliminate this problem. **Conclusions.** It is concluded that the following solutions for interaction between local self-government bodies and executive authorities are appropriate, in order to, inter alia, comply with the principle of decentralisation of power and other general principles of local self-government: adoption of relevant legislation and establishment of criteria for cooperation by the powers of central (state/regional) authorities; Relevant legislation should be adopted and criteria for cooperation by the powers of central (state/regional) authorities should be established; Provision of funding is in most cases the responsibility of the central government, although municipalities also have the right to increase taxes on their territory, as well as the institution of co-financing for some issues is provided; Monitoring of legality is the responsibility of central (state/regional) authorities; In addition, mechanisms for monitoring budget compliance exist; The joint responsibility provides for centralised mechanisms for monitoring performance; The duty to hold regular consultations with municipal associations on the approval of local charters, budgets and other important issues related to local self-government shall be enshrined in the law; Special agreements shall be concluded between local self-government bodies and executive authorities to increase the efficiency and productivity of cooperation or to determine ways to finance powers, etc.

Key words: decentralisation of power, principles of local self-government, interaction of local self-government bodies with executive authorities, local self-government bodies, delegated powers.

1. Introduction

Decentralisation has been implemented in all European countries, for economic, political and other reasons (depending on the country). For example, in some countries, it can be seen as a historical reaction to previous strong centralisation of power and even existing autocratic tendencies, i.e. it was a way to ensure that democratic processes would not be reversed.

Despite numerous benefits of decentralisation, there are always potential risks in such reforms that may arise from partial or unbalanced implementation. The outcome of administrative reform depends to a large extent on how decentralisation is planned.

One of the most common problems is the inconsistency between the responsibilities assigned to local authorities and the resources

available to them to fulfil them, as funding is often a "weak link" in decentralisation. Despite the principle of "finance follows functions" (also called the "linkage principle" or "matching principle"), in practice there is often an imbalance between the level of responsibility and the amount of revenue, which leads to the failure to provide or underfund certain powers.

The second problem of decentralisation is the lack of financial autonomy of local authorities to perform their duties. At the same time, such financial autonomy is necessary for these authorities to be able to effectively use public resources to meet local needs. Fiscal autonomy is about giving subnational governments a certain degree of autonomy in resource mobilisation and management.

Without concrete measures to strengthen the capacity of the regions, only the most developed and prosperous communities will benefit from decentralisation, which will increase regional disparities, and existing differences in financial capacity and administration will only jeopardise their development opportunities (Ezcurra, Rodríguez-Pose, 2012).

The implementation of the principle of decentralisation of power in the work of local self-government and executive authorities has been studied by the following scholars: O. Batanov, N. Fedina, N. Melnyk, N. Shevtsov, M. Kliutsevskiy, V. Yatsuba, V. Yatsiuk, O. Matviishyn, Y. Karpinskyi, V. Kuibida, V. Nehoda, P. Panchyshyn, I. Mishchuk, L. Bondarchuk, V. Urbanovych and others. The issue of decentralisation of power has been studied by the foreign scholars such as R. Ezcurra, A. Rodríguez-Pose, D. Allain-Dupre, V. Tselios, A. Fiszbein and others.

The purpose of the article is to study the interaction of local self-government bodies with executive bodies, to highlight the problems of non-compliance with the principle of decentralisation of power in the course of such interaction, and to propose ways to improve this process in Ukraine and mechanisms to ensure compliance with the basic principles of local self-government by the designated bodies.

2. Specific features of power decentralisation

The political dimension of decentralisation is to promote local democracy, improve the quality of governance, involve citizens in local issues, and demonstrate accountability and transparency; however, this aspect has been left in the background in favour of a more effective economic approach aimed at achieving politically relevant results in areas such as education, healthcare or financial stability. This is partly due to the fact that in some countries the decentralisation process has been "hijacked" by local

and national elites who see it as a means of mobilising and supporting regional authorities.

A significant challenge to decentralisation is the overlap of tasks between different levels of government. This problem has been repeatedly mentioned as critical in OECD Economic Surveys, as well as in studies by the International Monetary Fund (IMF) and the World Bank. The problem is relevant for both unitary and some federal countries, such as Australia or Germany. Lack of clarity in the distribution of responsibilities makes service provision and policy making more costly. It also contributes to a democratic deficit by creating confusion regarding which body is responsible for a particular service, activity or decision. Without a clear distribution of responsibilities, it becomes almost impossible to hold those accountable for policy shortcomings or failures, which also hinders efforts at transparency and citizen engagement (Allain-Dupre, 2018).

This problem can arise especially in a multi-level system of governance with multiple levels of government and a large number of subnational governments. For example, in Brazil, the distribution of responsibilities is unclear in a number of areas, including health, education, social security, agriculture and food, environmental protection, etc. In Chile, municipalities have several exclusive powers, and there are 13 joint national/municipal powers with unclear or incorrectly defined responsibilities. In France, it has been proposed to clarify the competence of departments and interim governments and to intensify efforts to share functions between municipalities (Multi-level Governance Reforms: Overview of OECD Country Experiences, 2018).

The unclear assignment of responsibilities and functions is particularly pronounced in sectors that are most often distributed among different levels of government, such as infrastructure (transport), education, land management, healthcare and the labour market. For example, in most OECD countries, lower tiers of government are responsible for managing and financing the lower levels of schooling (mainly pre-primary, primary and sometimes lower secondary education), while responsibility for secondary and upper secondary education is most often at the provincial/regional or central level. Such distribution, in which different levels of schooling operate under different political and administrative jurisdictions, can pose significant challenges in terms of efficient use of resources (risk of competition, duplication and overlap) and coordination of policies and activities of actors. The lack of sufficient administrative, technical or strategic capacity is probably one of the biggest challenges in decen-

tralisation, which can limit or hinder its implementation.

In addition to insufficient financial capacity, the lack of staff, experience, and qualifications required to deal with complex tasks such as strategic planning, procurement, infrastructure investment, supervision of local public services, performance monitoring, etc. The institutional capacity of local authorities varies widely across the country, even in the most developed ones (Tselios, 2012).

Sometimes local authorities may lack the human resources to plan, implement and manage public services. Therefore, the professionalism of civil servants (their level of education, work experience, etc.) working in such bodies is key. If the latter cannot attract highly qualified personnel to provide the relevant services to the population for some reason, then the decentralisation process may be at risk. In such cases, central government can support local capacity development through training and financial resources. Meanwhile, local leadership, community engagement, and local accountability for service provision programmes are equally important factors for successful capacity building (Fiszbein, 1997). Without sufficient support at the local level, public resources invested in capacity building may be wasted.

It should be noted, however, that capacity building takes time and therefore requires a long-term commitment from both central and local governments. Even in developed countries, the capacity gap remains significant, despite all efforts to close the gap. For example, two-thirds of subnational governments (65%) reported that their cities lacked the capacity to develop quality infrastructure strategies. More than half (56%) said they lacked adequate experience in infrastructure (Infrastructure Planning and Investment across Levels of Government: Current Challenges and Possible Solutions, 2015).

Therefore, we have examined the problems faced by countries in the course of decentralisation. Now the focus will be on the developments of domestic scholars and the issues they have addressed in their research of this process in our country.

3. Local self-government in Ukraine

Having studied the problems of reforming the constitutional model of local self-government in Ukraine, O. Batanov states that the existing regulatory framework of local self-government in Ukraine and the projects implemented in the field of formation and development of territorial communities have been fragmentary and aimed only at solving certain issues of constitutionalising their status. There-

fore, a comprehensive solution to the main problem of the organisation and functioning of local self-government in modern Ukraine is relevant - the creation of constitutional and legal conditions for the establishment of territorial communities as primary entities of local self-government, the main bearers of its functions and powers (Batanov, 2016).

According to N. Fedina, N. Melnyk, and M. Shevtsiv, the current constitutional provisions do not contribute to the further development of local self-government, but rather hold it back to a certain extent. The reasons for the inefficiency of local self-government are partially reflected in its constitutional model. Therefore, the Constitution of Ukraine contains a basic provision that local self-government is the right of a village, settlement or city community to manage local affairs. This formulation enables the community to effectively refuse or incompletely or incorrectly implement public self-government in the event of a low level of legal awareness and legal culture of the population of the territorial unit. According to the Law of Ukraine "On Local Self-Government", executive bodies of rayon and oblast radas do not perform administrative functions, and their activities are limited to organising, legal, informational, analytical and logistical support of the activities of the radas (Article 58, part 2). Therefore, the powers of local state administrative bodies are too broad, and the law requires regional representative self-government bodies to delegate administrative functions to local self-government (Fedina, Melnyk, Shevtsiv, 2023).

In addition, the scientists emphasise that the state structure of power relations at the state and local levels needs to be changed. All levels of local self-government bodies need clearly defined powers and competences at the regulatory level (Fedina, Melnyk, Shevtsiv, 2023).

According to V. Kliutsevskiy, "the Verkhovna Rada has not yet made the necessary amendments to the current Constitution of Ukraine, has not adopted laws on the administrative-territorial structure, on all-Ukrainian and local referendums, on general meetings of citizens at the place of residence, on communal property, on the territorial community, a new version of the Law "On Local Self-Government in Ukraine," etc. Furthermore, it is now urgent to take some concrete measures to strengthen and develop local self-government in Ukraine, as the Council of Europe, of which our country is a member, constantly reminds us. By ratifying the European Charter of Local Self-Government in 1997, Ukraine undertook a number of commitments in this area that have not yet been fully implemented. Local self-gov-

ernment at the rayon and oblast levels remains imperfect; rayon and oblast radas do not have their own effective executive structures; there is overlap between the powers and competences of representative bodies and executive bodies of local self-government; the management of communal property needs to be regulated, and the legal status of jointly owned objects of territorial communities needs to be defined by law; autonomy in land matters is needed; local budgets should retain more fees and taxes, and a smaller percentage to the state budget. The list of still unsolved problems can be continued" (Kliutsevskiy, 2019).

We agree with the opinion of other researchers who believe that among the urgent problems of interaction between local governments and executive authorities, an important place belongs to the creation of effective mechanisms for the distribution of powers between different levels of local governments (Iatsuba, Yatsiuk, Matvishyn, Karpinskyi, Kuibida, Nehoda, 2007).

R. Panchyshyn shares their position and concludes that the main areas of interaction between local self-government bodies and local state executive authorities are: interaction in the field of formation and implementation of the state regional policy; interaction in the field of land management and improvement of settlements; interaction in the field of education, public health, environmental protection, natural resources management, subsoil use, mining, public security, etc. However, in practice, in the process of cooperation between these bodies, some problematic issues arise regarding the distribution of their competence (Panchyshyn, 2018).

According to I. Mishchuk, the main reason for the problems that arise in the relations between local self-government bodies and executive authorities is the imperfection of the current legislation of Ukraine, which aims to regulate their joint activities, which is clearly illustrated by the analysis of the Laws of Ukraine "On Local Self-Government in Ukraine" and "On Local State Administrations" in the part where legislators define the list of delegated powers (Mishchuk, 2023).

L. Bondarchuk and V. Urbanovych believe that the problems of distribution of powers and issues of interaction between local self-government bodies and local state administrations in the Ukrainian system of local government have existed since the establishment of this system, that is, since 1992.

In their opinion, the division of powers between local self-government bodies, which have their own, self-governing and delegated powers, and local state administrations, which have the relevant administrative and execu-

tive powers, is due to the following reasons: 1) the need to establish competitive political and legal responsibility of these bodies for the areas of work defined by the Constitution and laws; 2) violation of the balance of interests between these bodies established by the Constitution and laws; 3) gaps in regulating or duplication of certain powers of these bodies, etc. (Bondarchuk, Urbanovych, 2015).

Therefore, Ukraine has faced certain challenges in implementing decentralisation, the most common of which are the lack of adequate autonomous funding, unallocated responsibilities in terms of exercising delegated powers, and unclear areas of competence between local governments and executive authorities, etc.

4. Conclusions

Based on the results of the study, we propose the following solutions for interaction between local self-government bodies and executive authorities are appropriate, in order to, inter alia, comply with the principle of decentralisation of power and other general principles of local self-government: Relevant legislation should be adopted and criteria for cooperation by the powers of central (state/regional) authorities should be established; Provision of funding is in most cases the responsibility of the central government, although municipalities also have the right to increase taxes on their territory, as well as the institution of co-financing for some issues is provided; Monitoring of legality is the responsibility of central (state/regional) authorities; In addition, mechanisms for monitoring budget compliance exist; The joint responsibility provides for centralised mechanisms for monitoring performance; The duty to hold regular consultations with municipal associations on the approval of local charters, budgets and other important issues related to local self-government shall be enshrined in the law; Special agreements shall be concluded between local self-government bodies and executive authorities to increase the efficiency and productivity of cooperation or to determine ways to finance powers, etc.

References:

1. Ezcurra, R., Rodríguez-Pose, A. (2012). Political decentralization, economic growth and regional disparities in the OECD. *Regional Studies*. Retrieved from <https://doi.org/10.1080/00343404.2012.731046> (in English).
2. Allain-Dupre, D. (2018). Assigning Responsibilities across Levels of Government: Trends, Challenges and Guiding Principles for Policy-makers, OECD. Paris. pp. 3-7. Retrieved from <https://www.sipotra.it/wp-content/uploads/2018/10/ASSIGNING-RESPONSIBILITIES-ACROSS-LEVELS-OF-GOVERNMENT.pdf> (in English).

3. OECD. Multi-level Governance Reforms: Overview of OECD Country Experiences, OECD Publishing, Paris. 2018. URL: <https://doi.org/10.1787/9789264272866-en> (in English).

4. Tselios, V. (2012). Income inequality, decentralisation, and regional development in Western Europe. Environment and Planning A. Retrieved from <https://doi.org/10.1068/a44334> (in English).

5. Fiszbein, A. (1997). The emergence of local capacity: Lessons from Colombia. World Development. Retrieved from [https://doi.org/10.1016/S0305-750X\(97\)00020-X](https://doi.org/10.1016/S0305-750X(97)00020-X) (in English).

6. OECD/CoR. Infrastructure Planning and Investment across Levels of Government: Current Challenges and Possible Solutions. OECD, Paris. 2015. Retrieved from <https://cor.europa.eu/en/our-work/Documents/ECON%20archived%20documents/2015.12.11%20-%20CoR-OECD%20consultation%20infrastructure%20investment.pdf> (in English).

7. Batanov, O. (2016). Aktualni problemy reformy konstytutsiinoi modeli mistsevoho samovriaduvannia v Ukraini [Actual problems of the reform of the constitutional model of local self-government in Ukraine]. Naukovi zapysky Instytutu politychnykh i etnonatsionalnykh doslidzhen im. I.F. Kurasa NAN Ukrainy, no. 5-6, pp. 34–43 (in Ukrainian).

8. Fedina, N., Melnyk, N., Shevtsiv, M. (2023). Spivvidnoshennia orhaniv derzhavnoi vlady ta mistsevoho samovriaduvannia ta yikhnia rol u formuvanni demokratychnoho suspilstva [The relationship between state authorities and local self-government and their role in the formation of a democratic society]. Pravo ta derzhavne upravlinnia, no. 3, pp. 13–18 (in Ukrainian).

9. Kliutsevskiy, V. (2019). Orhany mistsevoho samovriaduvannia v Ukraini: istorychnyi aspekt ta nahalni problemy sohodennia [Local self-government bodies in Ukraine: historical aspect and urgent problems of today]. Vcheni zapysky TNU imeni V.I. Vernadskoho. Serii: Derzhavne upravlinnia, no. 6, pp. 102-108 (in Ukrainian).

10. Iatsuba, V.H., Yatsiuk, V.A., Matviishyn, O.Ya., Karpinskyi, Yu.O., Kuibida, V.S., Nehoda, V.A. (2007). Administratyvno-terytorialnyi ustroi Ukrainy. Shliakhy reformuvannia [Administrative and territorial system of Ukraine]. K. : Heoprynt (in Ukrainian).

11. Panchyshyn, P. (2018). Perspektyvni napriamy rozvytku vzaemodii orhaniv mistsevoho samovriaduvannia ta mistsevykh orhaniv derzhavnoi vykonavchoi vlady [Prospective directions of development of cooperation between local self-government bodies and local bodies of state executive power]. Ukrainskyi chasopys konstytutsiinoho prava, no. 3(8), pp. 47–53 (in Ukrainian).

12. Mishchuk, I.V. (2023). Vzaiemodiia orhaniv mistsevoho samovriaduvannia z orhanami derzhavnoi vlady [Interaction of local self-government bodies with state authorities]. Naukovi visnyk Mizhnarodnoho humanitarnoho universytetu, no.61, pp. 18-21 (in Ukrainian).

13. Bondarchuk, L.V., Urbanovych, V.A. (2015). Vzaiemodiia orhaniv derzhavnoi vlady ta orhaniv mistsevoho samovriaduvannia: pravovi y funktsionalni aspekty [Interaction of state authorities and local self-government bodies: legal and functional aspects]. Mizhnarodnyi naukovi zhurnal «Naukovi ohliad», no. 11(21), pp. 30-38 (in Ukrainian).

Анастасія Козін,

доктор філософії в галузі права, старший науковий співробітник відділу

актуальних питань філософії права та юридичної лінгвістики

(Науково-дослідний інститут публічного права)

вулиця Георгія Кірпи 2 а, Київ, 03055

kozinanastasiia@ukr.net

ORCID ID: 0009-0000-5793-6852

ПРОБЛЕМИ НЕВІДПОВІДНОСТІ ПРИНЦИПУ ДЕЦЕНТРАЛІЗАЦІЇ ВЛАДИ ПІД ЧАС ВЗАЄМОДІЇ ОРГАНІВ МІСЦЕВОГО САМОВРЯДУВАННЯ ТА ОРГАНІВ ВИКОНАВЧОЇ ВЛАДИ

Анотація. Мета. Метою статті є дослідження взаємодії органів місцевого самоврядування з виконавчими органами, виокремлення проблем недотримання принципу децентралізації влади під час такої взаємодії, запропоновано способи удосконалення визначеного процесу в Україні та механізми забезпечення дотримання основних засад місцевого самоврядування визначеними органами. **Результати.** Наукова стаття присвячена дослідженню дотримання органами виконавчої влади однієї із основних засад місцевого самоврядування – децентралізації влади під час взаємодії з органами місцевого самоврядування. Визначено сфери взаємодії та повноваження, які нормативно передбачають необхідність взаємодії органів місцевого самоврядування з органами виконавчої влади; зазначено перелік можливих питань, що є предметом неврегульованої нормативно взаємодії між визначеними органами. Проаналізовано проблеми, з якими стикаються органи місцевого самоврядування під час або за результатом взаємодії з органами виконавчої влади. Визначено проблему та виокремлено питання, що часто стають підставою недотримання органами виконавчої влади принципу децентралізації влади під час взаємодії з органами місцевого самовря-

дування, та запропоновано шляхи ліквідації такої проблеми. **Висновки.** Зроблено висновок, що доцільними є наступні рішення для взаємодії між органами місцевого самоврядування та органами виконавчої влади, з метою, у тому числі, дотримання принципу децентралізації влади та інших загальних засад місцевого самоврядування: прийняття відповідного законодавства та встановлення критеріїв співробітництва повноваженнями центральних (державних/регіональних) органів влади; забезпечення фінансування у більшості випадків є завданням центральних органів влади, хоча муніципалітети також вправі збільшувати податки на своїй території, а також передбачений інститут спільного фінансування з деяких питань; нагляд за законністю є повноваженням центральних (державних/регіональних) органів влади; крім того, існують механізми контролю за дотримання бюджету; у рамках спільної відповідальності передбачені централізовані механізми контролю за результатами роботи; нормативно закріплено обов'язок проведення регулярних консультацій з муніципальними асоціаціями щодо затвердження місцевих статутів, бюджетів та інших важливих питань, що стосуються місцевого самоврядування; укладення спеціальних угод між органами місцевого самоврядування та органами виконавчої влади для підвищення ефективності та продуктивності співпраці або визначення шляхів фінансування повноважень тощо.

Ключові слова: децентралізація влади, принципи місцевого самоврядування, взаємодія органів місцевого самоврядування з органами виконавчої влади, органи місцевого самоврядування, делеговані повноваження.